DECREE NO.
611/06 II P.O.

THE SIXTY-FIRST SESSION OF THE CONGRESS OF THE STATE OF CHIHUAHUA, SECOND PERIOD, SECOND YEAR OF CONSTITUTIONAL SERVICE:

DECREES:
FIRST ARTICLE. The new Code of Criminal Procedure of the State of Chihuahua is promulgated to read as follows:

CODE OF CRIMINAL PROCEDURE OF THE STATE OF CHIHUAHUA

TITLE ONE
GENERAL PROVISIONS

CHAPTER ONE
PRINCIPLES, RIGHTS AND GUARANTEES

Article 1. Objective of the proceedings

The objective of criminal proceedings is to establish historical truth, to guarantee justice in the application of law and to resolve conflicts that arise as the result of the crime in order to contribute to the restoration of social harmony among the parties as a mark of unrestricted respect for the fundamental rights of all persons.

Fundamental rights mean those [rights] recognized in the Federal and State Constitutions,[1] the laws derived from them, and international treaties ratified by [Mexico].

Article 2. Prior Trial and Due Process.

No person may be sentenced nor have his/her liberty restricted before a final judgment has been entered in a proceeding carried out in accord with this Code and in strict observance of the guarantees and rights provided by the Federal and State Constitutions, international treaties ratified by [Mexico] and the lhaws derived from them.

[1] The text refers to the *Constituciones Federal y Local*, however the *Constitución Local* refers to the Constitution of the State of Chihuahua, referred to hereafter as the State Constitution.

Article 3. Ruling Principles.

The principles of orality, public access, immediacy, confrontation and cross-examination (*contradicción*), continuity and unity of the proceeding will be strictly observed in criminal proceedings, in accord with the requirements of this Code.

The principles, rights and guarantees provided for in this Code will be observed in all proceedings that could result in a criminal penalty, a security measure [restriction on liberty or property] or any other measure affecting a person's rights.

Article 4. Rules of Interpretation.

Any legal provision that might limit or restrict personal liberty in whatever manner, even [if imposed] as a precaution, that might limit the exercise of rights conferred on those subject to [criminal] process, or that might impose procedural penalties or exclusions of evidence shall be strictly interpreted. With regard to these matters, neither broad interpretations nor interpretations by analogy are permitted, unless they benefit the defendant's liberty or permit other parties [to the case] to exercise a power conferred on them.

Article 5. Presumption of innocence.

The defendant must be presumed and treated as innocent at all stages of the proceedings until his/her guilt is established by a final judgment, in accord with the rules established by this Code.

Any doubt will be resolved in the manner most favorable to the defendant,

Presumptions of guilt are inadmissible in the application of criminal law.

No public authority may represent that a person is guilty nor provide information against him/her to that effect before a final judgment of conviction.

In the case of fugitives from justice, publication of essential information for their apprehension with a judicial warrant is permitted.

The Judge or Trial Court (*Tribunal*)[2] will issue an order, grounded in law and fact, limiting the participation of mass media [in the proceeding], when their distribution [of information on the case] could prejudice the ordinary development of the proceedings or when [such access] would exceed their right to receive such information.

[2] In this Code, the "Judge" usually refers to the "*Juez de Garantía*" who is the judge responsible for handling the charging and pretrial stages of a criminal case. He/she is sometimes referred to in this translation as the "Preliminary Judge." He/she does not participate in the trial. The "*Tribunal*" usually refers to the three-judge panel that handles the oral trial, translated here as the "Trial Court." There are also other specialized *Tribunales* such as the *Tribunal Colegiado* or *Tribunal de alzada*, both translated as the "Court of Appeals," and the *Tribunal de Casación*, translated here as the "Court of Nullification." The *Supremo Tribunal de Justicia* del *Estado* is translated as the State Supreme Court. Where the text refers to "*autoridad judicial,*" the translation usually uses the term "the court."

Article 6. Inviolability of the defense.

The right to a defense is an inviolable right at every stage of the proceedings. It is the responsibility of the court to guarantee [this right] without preference or inequality.

Every authority participating in the initial proceedings shall ensure that the defendant [is made aware of] his/her rights immediately, as provided for in the Federal and State Constitutions, international treaties ratified by Mexico and laws derived from them.

Except as provided by this Code, the defendant will have the right to participate personally in the judicial proceedings and to prepare such requests or observations as he/she considers appropriate, so long as he/she does not impede the normal course of the proceedings, in which case, the Judge shall exercise his/her right to impose such orders as he/she considers appropriate.

When the defendant is arrested, the person in charge of his/her custody will immediately transmit to the Judge or to the Trial Court any requests or observations prepared by the defendant and will ensure that he/she may communcate with his/her defense counsel. [Failure to fulfill these responsibilities concerning communciation] will be punished under the appropriate laws.

Article 7. Technical Defense.

From the time that any police, prosecutorial or judicial action points to a particular person as the possible author or participant in a criminal act until the execution of a judgment imposing a criminal penalty or security measure on him/her, the defendant will have the right to be assisted and defended by a professional attorney who is authorized [to practice law] under the Law for Professions in the State of Chihuahua, whether or not the defendant has named a confidential counselor (*una persona de confianza*)[3]

For these purposes, [the defendant] may choose a private authorized attorney; if he/she does not do so, he/she will be assigned a public defender.

The right to a competent defense cannot be waived, and violation of this right will result in the absolute nullification of all acts occurring thereafter.

Integral to the right to a defense is the right of the defendant to communicate freely and privately with his/her defense attorney and to be given time and

[3]A *persona de confianza* describes the legal status of a person who is officially recognized as a person on whom the defendant relies as a confidential counselor or trusted advisor. A *persona de confianza* traditionally has been recognized in Mexican law as an adequate substitute for a defense attorney when the police or Prosecutor are taking a statement from the defendant. Under this Code, the *persona de confianza* is no longer recognized as a legal substitute for a defense attorney during a defendant's statement, but the defendant may still be assisted by such a person in addition to his defense attorney or the public defender during the proceedings.

reasonable means to prepare his/her defense, taking into account the nature of the evidence that they seek to present. The communications between the defendant and his/her defense attorney are inviolate, and no one may invoke prison security, public order or any other reason as a basis to limit this right.

The rights and powers of the defendant may be exercised directly by the defense attorney, except for those [rights and powers] that are personal [to the defendant] or when there exists a limitation on legal representation or a prohibition in the law.

When members of indigenous towns and communities are accused of committing a crime, a defense attorney who is familiar with their language and culture will be obtained for them.

Article 8. Precautionary measures (*Medidas de cautelares*)

Precautionary measures [imposed] during the proceedings that restrict the defendant's personal liberty or other rights provided by this Code are the exception, and their use shall be proportional to the danger that they are attempting to prevent and the punishment or security measure that could later be imposed.

Article 9. Protection of privacy.

The right of the defendant or of any person to privacy, particularly to freedom of conscience, [privacy] of his/her home, correspondence, papers and effects and private communications will be respected. The search, seizure or interference with respect to any of these rights may be carried out only with authorization of the Judge with jurisdiction of the case.

Article 10. Prohibition on holding the defendant incommunicado and secret proceedings.

Holding the defendant incommunicado or holding a secret proceeding is prohibited.

Only in those cases and for the reasons authorized by this Code may one place under seal any action with regard to the defendant, and [such sealing may not continue] after the proceeding or the reasons that justified the decision have ended.

Article 11. Prompt justice.

Every person will have the right to be judged and to have the charges against him/her finally resolved within the time periods established by this Code. The defendant, the victim or the offended party[4] has the right to demand prompt

[4] *La ofendida*, translated as "the offended party," is the legally recognized successor-in-interest if the victim of the crime is dead. See Article 120 of this Code.

action when faced with a failure to act by the [responsible] authority.

Article 12, Equality under the law.

All persons are equal under the law and should be treated in accord with the same rules. Authorities should take into account the particular circumstances of the persons and the case, but they may not base their decisions on nationality, gender, ethnic origin, belief or religion, political persuasion, sexual orientation, economic or social position or any other condition that carries discriminatory implications.

Article 13. Equality between the parties.

The parties to the case are guaranteed equality in the plain and unrestricted exercise of their powers and rights, as provided by the Federal and State Constitutions and, International Treaties ratified by [Mexico], as well as those provided by this Code.

Judges may not communicate, directly or indirectly, with any of the parties or with their defense attorneys on matters brought to their attention without all of [the parties] being present. Violation of this principle will be punished in the manner provided by law. It is the responsibility of the judges to preserve the principle of equality of process and to remove obstacles that obstruct or weaken it.

Article 14. One single prosecution.

A person who has been convicted or acquitted or whose proceeding has been dismissed because of an executed judgment cannot be summoned for another criminal prosecution based on the same facts.

However, a new criminal prosecution may be instituted when the first prosecution was [reversed] because of defects in [the manner in which] it was brought or carried out.

Article 15. Special courts (*Juez natural*).

No one may be judged by a court that has been especially selected for the case. The power to apply criminal law will belong only to those courts that are created in conformity with current law before the criminal act that was the basis for the proceeding.

Article 16. Independence.

In exercising their judicial function, judges are independent from the other members of Judicial Branch and from other State governmental powers. [Executive agencies and the legislature]

For no reason and in no case may any agency of the State interfere with the Judge's carrying out of the [various] stages of the [court] proceedings.

If there is interference with their carrying out of their function, whether coming from another power of the State, the Judiciary or the public, the Judge or Trial Court should inform the full State Supreme Court of those acts which are affecting their independence, in which case [that Court] will adopt the necessary measures to end the interference, independent of any other administrative sanctions, civil penalties, punishment and other sanctions that [might be imposed] as a result of the interference, as provided in the State Constitution,.

Article 17. Objectivity and the duty to decide.

The judges shall resolve the matters brought before them objectively and should not decline to decide on whatever pretext, even when the law is silent, contradictory, deficient, obscure or ambiguous; nor may they improperly delay any decision. If they do so, they will be subject to the corresponding administrative, civil, and criminal sanctions.

To assure this result, judges will preside and be present throughout the entire course of the hearings and may not delegate their functions.

From the beginning of the proceeding and throughout its course, in their actions and decisions, the administrative and judicial authorities shall take into consideration not only the circumstances that are prejudicial to the defendant but also those that favor him.

Article 18. Grounds in law and fact for decisions.

Judges must ground their decisions in law and fact. The simple restating of the evidence, the mentioning of the [elements of the crime] (*requieremientos*), the arguments or claims of the parties or dogmatic assertions or generic or ritualistic formulas do not replace the [requirement] that in all cases decisions must be grounded in law and fact. The failure to fulfill this guarantee is a basis for a challenge to the decision as not grounded in law or fact, as required by this Code, and [shall be] without prejudice to any other sanctions that might be imposed.

There is no basis [for a decision] when the rules of sound criticism (*las reglas de la sana crítica*) have not been observed in evaluating the means of proof and critically important evidence.

Article 19. Lawfulness of the evidence.

Evidence will have value only if it has been legally obtained and produced and is introduced into the proceedings in the manner authorized by this Code. Evidence that has been obtained through torture, threats or violation of a person's fundamental rights will have no value.

Article 20. Evaluation of evidence.

Judges will evaluate the evidence in accord with [the principles] of sound

criticism, observing rules of logic, science and the maxims of experience.

Article 21. Application of the guarantees [in favor of] the defendant.

A guarantee established to benefit the defendant may not be ignored to his /her detriment.

The court also may not return to an earlier stage in the proceedings on the basis of the violation of a principle or guarantee established for the defendant's benefit unless he/she expressly consents.

Article 22. Right to an indemnity.

In case of judicial error, every person has the right to be indemnified in accord with the law.

Article 23. Restorative justice.

For purposes of resolving controversies subject to this Code, [this Code] adopts the Principle of Restorative Justice, meaning all those procedures in which the victim or offended party and the defendant or convicted defendant, in search of a restorative result, participate jointly and actively to resolve the questions arising from the crime.

"A restorative result" means an agreement that is directed toward attending to the needs and individual and collective responsibilities of the parties and succeeds in reintegrating the victim or offended party and the offender into the community, ["Restorative justice"] seeks to compensate for [any damage], to repay [any economic loss] and to serve to the community.

The Prosecutor[5] (*Ministerio Publico*) will use negotiation, mediation and conciliation, among other means, in order to achieve restorative justice.

[5] The *Procuarador General del Estado* is the principal state prosecutor, comparable to a State Attorney General in the United States The assistant prosecutors working under his or her authority are called "*Ministerios Publicos.*" In this translation, they are referred to as "the Prosecutor"

TITLE TWO
CRIMINAL PROCEEDINGS

CHAPTER I
GENERAL PROVISIONS

SECTION 1
FORMALITIES

Article 24. Language.

Criminal proceedings shall be conducted in Spanish.

When a person does not understand or cannot express himself easily in Spanish, he/she will be offered the necessary assistance so that the proceeding may be carried on in his/her own language.

[The court] must provide a translator or interpreter, as needed, to persons who do not understand Spanish. These persons, as well as those who have some difficulty in understanding [Spanish] will be permitted to use their own language [during the proceedings].

If the person is mute, the questions will be put to him/her orally, and he/she will respond in writing. If the he/she is a deaf-mute, both the questions and answers will be in writing. If such persons do not know how to read or write, [the court] will appoint an interpreter or teacher for deaf-mutes or, in the absence of such, another person who knows how to communicate with the person subject to questioning.

In the case of members of indigenous groups, if they request it, the court will appoint an interpreter, even if they speak Spanish. Documents and recordings in language other than Spanish must be translated.

Article 25. Statements and Interrogations with Interpreters.

Persons will be also examined in Spanish or with the assistance of a translator or interpreter, as necessary. The court may expressly permit examination in another language or form of communication.
The translation or interpretation will follow each question or answer.

Article 26. Location [of proceedings].

When necessary in order to gain an adequate understanding of circumstances relevant to the case, the court may move the proceedings to a place other than the regular courtroom.

The oral trial will take place and the judgment will be imposed in the judicial district in which the court has jurisdiction, unless [a proceeding in that place] could

cause a serious threat to public order or one of the interests guaranteed at trial or [defense of that interest] might be seriously impeded.

Article 27. Time [for proceedings].

Unless the law provides otherwise, legal proceedings may take place on any day and at whatever hour.

[The court] will order the place and the date on which [the [proceeding] will take place. Failure to include this information will not invalidate the order, unless the date on which it occurred cannot be determined from information in the order or other related ones.

Article 28. Record of proceedings. [Court record of the case]

Proceedings will be recorded in writing, by video [or] audio recording or by whatever other means guarantees that they can be reproduced.

Article 29. Examination and copying of court records.

Except as expressly provided by law, the parties always may have access to the contents of the court record. Court records may be consulted by third parties when they are aware of proceedings that have been made public lawfully, unless, during the investigation or in the course of the case, the Judge or Trial Court limits access in order to prevent [such access from] affecting the normal [development of proof in the investigation] (*su normal sustanciación*) or the presumption of innocence.

In response to a request by a party to the trial or a third party, in those cases where the law permits, the appropriate court administrative official will issue certified copies of the records or that part of them that would be relevant, in accord with the conditions set forth in previous sub-paragraphs. This administrative official also will certify if appeals have been taken against the final judgment.

Article 30 Safeguards.

When video or audio recordings are to be used at trial, the originals shall be preserved until trial under conditions that ensure that they cannot be altered, without prejudice to other copies being obtained for use for other purposes in the proceedings.

The formalities of the proceedings should to be made part of this same court record, and if this is not possible, then [they should be memorialized] in a complementary court record.

SECTION 2
JUDICIAL RECORDS

Article 31. General rule.

When one or more proceedings should be made part of the record in accord with this Code, the person that makes the record will note the time, date and place that [the proceeding] took place.

Article 32. Replacement of the judicial record.

The judicial record may be totally or partially replaced by another form of record, unless there is an express provision to the contrary. In such case, the person who presides over the proceeding will determine the appropriate place to safeguard it in order to guarantee that it is not altered and can be identified in the future [as the official judicial record.].

CHAPTER II
PROCEEDINGS AND JUDICIAL DECISIONS

Article 33. Enforcement power.

In order to assure compliance with the orders that it issues in exercising its powers, the Court may use its discretion to order any one of the following measures:

I. A warning.
II. Participation of the police.
III. Imposition of a fine [in an amount] of ten to two-hundred days of salary.[6]
IV. Detention for thirty-six hours.

Article 34. Restoration of matters to their prior status.

At whatever stage in the proceedings, the court may order, as a provisional measure, that matters be restored to the status they had before the subject act.

This may be done at the request of the victim or the offended party, so long as his/her [claimed] right is legally justified and would have been guaranteed if it had been pointed out.

Article 35. Resolution of the parties' requests or motions.

All requests or motions of the parties that due to their nature or importance, need to be argued, [or] require that evidence be produced, or in instances when the law expressly requires it, will be resolved in an oral hearing. When the law

[6] When the Code provides for a sanction of "__ days of salary," the amount is determined by statute and is not dependent on the individual's actual wages.

provides for it, they will be decided in writing within a maximum period of three days.

When any of the parties wishes to introduce evidence at the hearing, he/she should offer it in writing with the motion for the hearing. If the opposing party wishes to introduce evidence, he/she should offer it in writing before the hearing. Questions that are argued at the hearing shall be resolved there.

Evidence that is heard in a hearing prior to the oral trial has no probative value as a basis for the final judgment, except as expressly provided by law.

Article 36. Hearings before the Preliminary Judge (*Juez de Garantía*).

The principles set forth in Article 3 of this Code will be observed.in hearings before the Preliminary Judge.

During the hearings, the Preliminary Judge will have the same powers that are provided to the Presiding Judge of the Oral Trial Court (*el Presidente del Tribunal del Juicio Oral*) [as described] in Section 4 of Chapter III of Title 8.

The judge will prevent the parties from posing questions that are beyond the scope of the hearing or that are redundant or argumentative and may limit their participation.

Article 37. Decisions

The court will issue its decisions in the form of judgments and orders. It will issue judgments to conclude the proceedings and orders in all other cases. Judicial decisions ought to take note of the place and date on which they were issued.

Decisions that involve burdensome acts (*que constituyen actos de molestia*) and that are issued verbally during the hearing should be transcribed immediately at the conclusion [of the hearing]. The transcript shall be faithful and exact, and, if there is an objection, that fact should be incorporated in the record of the hearing.

Article 38. Decisions of the Courts of Appeals

Except as provided by this Code, decisions of the Courts of Appeals will be decided unanimously or by a majority of votes. If a Judge or Magistrate is not in agreement with the decision adopted by the majority, he/she should set forth [the reasons for] his/her particular vote and sign it.

Article 39. Signature.

Decisions will be signed by the Judges. Without prejudice to any disciplinary measures to which he/she may be subject, a decision will not be invalidated because the Judge signed it beyond the time allowed, so long as there is no doubt that he/she participated in the decision that he/she should have signed.

If it is possible to correct the omission, it should be done, unless the Judge has not been able to sign it because of an insurmountable impediment that arose after the hearing.

Article 40. Clarification and additions [to the order]..

On his/her own authority (*de oficio*)[7] or at the request of a party, the Court, in editing its decisions, may clarify the basis in fact and law that it failed to express when the order was issued, as well as clarify any vague, ambiguous or conflicting portions; he/she may also add to its content, if he/she failed to resolve some point in controversy, so long as these changes do not modify the meaning of what was decided and do not cause injury to fundamental rights.

If the decision was issued during a hearing, the clarifications referred to in the prior paragraph should be made or requested in the same hearing, immediately after the reading of the decision. Otherwise, the motion for specificity or clarification should be made within three days of receiving notice of the decision. Filing the motion will stay the period for filing the appropriate appeals.

Articule 41. Finallity of decision.

If a timely motion is not filed, judicial decisions will be final and executable, without the need to make any [further] statement.

Articule 42. True copy.

When the original decision or other original proceedings are lost, destroyed or removed for whatever reason, the original of the document which is of record [true copy] will have the same value as had [the originals]. For this purpose, the Judge will order the person having the true copy to provide it, without prejudice to his/her receiving another at no cost. The reinstatement [of the case] may also be accomplished using the Court's data and electronic files.

Article 43. Restoration and re-creation [of records]

If copies of the documents do not exist, the Judge will order that they be replaced, for which purpose he/she will receive evidence demonstrating their prior existence and their content. When that is impossible, the court will order the re-creation [of the record] and the manner in which that will be achieved.

[7] This Code does not include a phrase equivalent to a court taking an action on "its own motion," or on its own authority, but the concept of acting "*de oficio*" is similar.

CHAPTER III
COMMUNICATION BETWEEN THE AUTHORITIES

Article 44. General rules

When a procedural act should to be carried out by another authority, the Judge, Trial Court, Prosecutor or police may refer it to that authority to be accomplished.

These assignments should be carried out by whatever means guarantees their authenticity.

The requested authority will process the requests they receive without delay. Disobedience of these instructions may be sanctioned administratively, without prejudice to any applicable criminal sanction.

Article 45. Letters rogatory to foreigner authorities.

Requests directed to judges or foreign authorities will be carried out through letters rogatory and will be processed in the manner provided by treaties in force with [Mexico] and federal law.

Nevertheless, in urgent cases, communications may be directed to whatever judicial or administrative official is expecting the letters rogatory or the response to a legal request, without prejudice to formalizing the measure later, in accord with the prior paragraph.

Article 46. Requests [for legal action] from other jurisdictions.

Legal requests [or letters rogatory] from other jurisdictions will be processed without delay, so long as they do not prejudice the jurisdiction of the Trial Court and are in accord with law.

Article 47. Delay or rejection.

When the processing of a legal request of whatever kind has been delayed or unjustifiably rejected, the requesting authority may turn to the supervisor of the person who should fulfill the request in order that he/she may order or arrange for its processing.

CHAPTER IV
NOTICE, COMMUNICATIONS AND SUMMONS

Article 48. Notice.

With regard to decisions and orders that require participation of the parties or

third parties, notice will be given in accord with regulations issued by the State Supreme Court. [These regulations] shall ensure that notices are promptly given and that:

I. The content of the decision or the [nature] of the required action is transmitted clearly, precisely and completely, together with the period of time within which to complete it ;

II. [The notice] contains all the elements necessary to secure [the rights of] the defense and the rights and powers of all the parties; and

III. [The notice] sufficiently informs the defendant or the victim or offended party, as applicable, when the exercise of a right is subject to a deadline or condition.

Article 49. General Rule

Notice of decisions announced during judicial hearings will be considered to have been given to those parties present at the hearing or who should have been present.

Interested persons may request copies of the registers in which a record is made of these decisions, which copy will be provided without delay.

Notice of decisions that are issued outside the hearing should be given to the appropriate parties within twenty-four hours after they are issued, except when the court sets a shorter period. Only those persons who have been duly notified are required [to comply with the decision].

Article 50. Person designated to serve notice.

Notice will be servedt by the person designated by the relevant Regulation or by the person who is specially appointed by the court. The assistance of administrative authorities may be requested in order to serve notices.

Article 51. Place for notice.

At the time of their appearance before the judicial authority, the parties shall provide their addresses within the jurisdiction and the means by which they may receive notice.

The defendant will be notified at the courtroom, District Court offices, or designated place of residence, or in the place where the defendant is detained.

Any of the participants may be be personally notified in the courtroom or at the Trial Court.

The agents of the Prosecutor and defense attorneys are obliged to come daily to the District Court offices to receive the required notices.

Public servants who participate in the proceedings will be notified in their respective offices, so long as these are located at the place of the trial.

Those persons who do not have a conventional place of residence or do not

inform [the court] of a change [in address], will be notified at the offices of the Court (*estrados*).

Article 52. Notice to defense attorneys and lawful representatives.

If the parties have a defense attorney or other lawful representative, the notices shall be directed only to them, unless the law or nature of the order demands that the party also be notified.

The defense attorney and the legal representative will be responsible for damages and any prejudice to their clients, when their negligence is the cause.

Article 53. Forms of notice.

When notice should be made orally, [the person charged with providing notice] will read the content of the decision, and if the person notified requires a copy, one will be provided to him, together with the name of the Court and the case to which [the notice] refers.

The person giving notice shall make a record of having done so, will record the place, day and hour of the notice and, together with the recipient, will sign [the record of notice] or make note of the fact that [the recipient] refused to or could not sign it.

When the notice is not provided orally and the person notified refuses to accept a copy, the copy will be attached to the door where the notification occurred, and a record made of that fact.

Article 54. Special form of notice.

When a party *(el interesado*) expressively agrees, he/she may be notified by whatever electronic means. In such case, the period of time [for response] will begin to run on the date on which the communication was received, according to a confirmation by the the office or transmittal medium At the same time, notice may also be provided through other means authorized by the State Supreme Court, so long as it does not prejudice the defense.

Notice also may be made by certified mail, but in such case the period of time [for response] will run from the recorded date of receipt.

Article 55. Notice to an absent person.

When the person to be notified is not found at the address on file, a copy [of the notice] will be provided to whoever lives or works there, with a record being made of this fact and the name of the person who received it.

If no one is present at the place of residence of record, the person serving the notice will place a notice of an appointment for the following day on the door. If on that day, the person serving notice does not find anyone there, he/she will post a copy of the notice order in the same place, making a record of his/her action,

without prejudice to the obligation to post another copy at the offices of the appropriate Judge or Trial Court.

Article 56. Notice by publication (*edictos*).

When the location of the person to be notified is unknown, the decision will be made known by public notice, which will be published in the newspaper with the greatest circulation in the State, without prejudice to using other means of mass communication in the region or adopting other appropriate measures to locate him/her.

Article 57. Nullification of notice.

The notice will be nullified whenever it would prejudice the defense (*cause indefensión*) , namely when:

I. There has been an error made in identifying the person notified;
II. Notice of the decision has been incomplete;
III. The record of notice does not include the date, or, if appropriate, the date a copy [of the noice] was delivered;
IV. The notice lacks one of the required signatures;
V. There is a difference between the original and the copy received by the interested party, if that is relevant; and
VI. In any other circumstance that prejudices the defense.

Article 58. Summons.

When it is necessary that a person be present for a proceeding, the authority with responsibility for the case should order that he/she be summoned by whatever means assures the authenticity and the receipt of the message. In such a case, the summons should make known the purpose of the summons and the proceeding for which the person is called; in addition, it should advise that if, without just cause, the order is not obeyed, the person may be brought [before the authority] by the police and will pay the resulting costs.

Article 59. Communication of proceedings of the Prosecutor.

When, during the course of an investigation, an agent of the Prosecutor should communicate with another person regarding a proceeding, he/she may do so by whatever means assures that the message is received.

The provisions of this Chapter will be applicable, as appropriate.

CHAPTER V

TIME LIMITS

Article 60. General Rule

All proceedings will be completed within the time limits established.

Judicially-imposed time limits will be set based on the nature of the proceeding and the importance of the activity that must be completed, taking into account the rights of the parties.

Individual time limits will begin to run at the beginning of the day following the day when notice was given to the interested party; shared time limits [will begin to run] on the day following when the last notice was provided.

[With regard to time limits counted in days], Sundays and holidays will not be counted. With regard to remaining time limits that expire on a holiday, the time limit will be extended to the next working day.

Article 61. Calculation of time limits set for the purpose of protecting the freedom of the defendant.

Irrespective of the provisions of the preceding Article, with regard to the time limits established for the protection of the liberty of the defendant, both working days and holidays will be counted. When a request for amendment of a precautionary restriction on personal liberty is made and the Judge does not resolve the matter within the time limits set by this Code, the defendant may press for a prompt decision, and if he/she does not obtain a decision within forty-eight hours, he/she will be released. To make this effective, the President of the State Supreme Court will be asked to order his/her immediate release and to order an investigation of the reasons for the delay.

Article 62. Waiver or shortening [of time limits].

The parties benefiting from an established time limit may waive it or consent to its being shortened through an express statement. In cases involving time limits held in common, all the parties governed by [the time limit] must express their consent.

Article 63. Period for decision.

Hearing decisions shall be issued immediately after the conclusion of the argument and before the hearing is declared closed. In special circumstances, in those cases in which the decisions are extremely complex, the Preliminary Judge or the Trial Court may withdraw to consider their decision, in accord with procedures established by this Code for the Oral Trial.

In all other cases, the Preliminary Judge, Trial Court or Prosecutor, as applicable, will decide the matter within three days of the presentation or motion in which the request was made, so long as the law does not set a different time limit. Violation of this rule will be sanctioned under the applicable provisions of the

Organic Law (*Ley Orgánico*) .[8]

Article 64. Reinstatement of a time limit.

If, through no fault of his/her own, someone has been unable to comply with a time limit, at an appearance immediately following [expiration of the time limit], he/she may request that the time limit be totally or partially reinstated, in order that he/she may carry out the act he/she failed to perform or may exercise a power recognized by law.

Article 65. Duration of the proceedings

Criminal proceedings for a crimes with a maximum punishment of a term of imprisonment not exceeding two years shall be processed within a period of four months, and those with a greater term of imprisonment within one year, measured from the time when the order finding probable cause to hold the defendant for prosecution (*auto de vinculacioón a proceso*)[9] is issued, until issuance of the final judgment, unless the defense requests a longer time limit.

CAPÍTULO VI
EXPENSES AND INDEMNIFICATIONS

SECTION 1

COSTS OF THE PROCEEDING

Article 66. Costs of the Proceeding.

All expenses arising from investigative acts, proceedings agreed to on the Tribunal's own authority and [those done] at the request of the Prosecutor, will be covered by the State treasury.

Expenses for actions requested by the defendant or the defense attorney will be covered by whoever requests them, unless the Judge believes that would be impossible, in which case they will be borne by the State.

At the request of a party, when the Judge believes that the defendant has

[8] Under Mexican law, there is a body of administrative law governing each department, commission or government-controlled entity that is referred to as the *Ley Orgånica*

[9] The *auto de vinculación definitiva a proceso* (literally, an order definitively tying the defendant to the criminal proceeding) is equivalent to a United States magistrate judge or district judge, after a preliminary hearing, making a finding of a corpus delecti and the probable responsibility of the defendant, and binding the defendant over for further criminal proceedings.. It is translated as "a finding of probable cause to hold the defendant for prosecution" or "a finding of probable cause." It is further discussed at Articles 280, *et seq*. *El auto de no vinculación del imputado a proceso* is the denial of such a finding.

insufficient resources to pay for the cost of experts and that a failure to carry out procedures requiring an expert could have a deleterious effect on the possibilities of a defense, he/she may order the Office of the State Attorney General or whatever other public institution or university, to name an expert to carry out the expert examination.

Article 67. Imposition [of costs].

Every decision that ends a criminal matter should resolve the issue of costs of the case, except when the judge finds reason to exempt [those costs from payment], fully or partially.

The costs of the proceedings will be be imposed on the State, which will indemnify contributions made by the defendant, so long as his/her acquittal or the dismissal of the case is based on [the fact that] or is ordered because the crime did not occur or the defendant was not involved in it. Under these circumstances, the Judge or Tribunal that issues the decision shall order the judgment on costs in favor of the defendant.

Article 68. Exemption.

Without prejudice to any disciplinary sanctions or other sanctions they may incur, the Prosecutor and the defense attorneys may not be ordered to pay the costs of the proceedings, except in cases of their bad faith,

Article 69. Content.

Procedural expenses include:

I. Those originating from conducting the proceedings, with the exception of those actions that are purely judicial that [for that reason] are exempted [from being treated as costs] by the federal Constitution;

II. Those reasonable honoraria paid to attorneys-at-law (*licenciados en Derecho*),[10] experts, technical advisors or interpreters who participated [in the case]..

The determination, liquidation and collection of these expenses will be resolved as a separate matter after judgment is announced.

Article 70. Liquidation.

In order to set the amount of expenses to be liquidated, the judge will take into account the evidence presented by the parties, the nature of the case, and the services rendered, as well as local practice, and will be authorized to reduce or eliminate that portion that may be excessive, disproportionate or superfluous.

[10] There is no formal bar administered by the courts in Mexico. Those who pass their university examinations in law are then licensed as attorneys.

SECTION 2
INDEMNIFICATION OF THE DEFENDANT

Article 71. The obligation to indemnify..

The defendant has the right to be indemnified when his/her right to privacy, physical, psychological or moral integrity, personal liberty or freedom of employment has been unlawfully affected.

It will be understood that his/her privacy is affected when, under circumstances not recognized by the law, information against the defendant contained in the investigation is divulged through the mass media.

It will be understood that personal liberty is affected when it is shown that a crime did not take place or that the defendant was not involved in the crime and he/she has been subject to preventive detention, house arrest or disqualification or suspension from his/her profession or employment during the proceedings; or if the judgment has been amended, the defendant has been acquitted because his/her innocence has been clearly established. or he/she has suffered a criminal punishment or security measure greater than what should have been imposed, given the circumstances.

In all cases, the defendant must be indemnified when he/she has been tortured, or treated in a cruel, inhumane or degrading manner.

There will be no indemnization when later, more favorable laws or jurisprudence are issued or in the case of amnesty or a pardon.

Article 72. Jurisdiction.

The indemnizatiion referred to in the previous Article will be ordered by the Preliminary Judge, at the request of the defendant, or by the Trial Court in its judgment of acquittal.

Article 73. Death of the rightful claimant.

If the defendant has died, his/her successors will have the right to collect or take steps to acquire the indemnization provided for, in accord with the provisions of civil law.

Article 74. Obligation.

The State always will be obliged to pay the indemnization to the person who has been convicted, without prejudice to its right to seek recovery [from the public servant who was personally responsible for the wrong].

CHAPTER VII
NULLIFICATION OF THE PROCEEDINGS

Article 75. General principle.

Those acts that involve a violation of fundamental rights or that are carried out in violation of proper procedures may not be used as a basis for a judicial decision unless the defect has been corrected in accord with the principles prescribed by this Code.

Article 76. Other formal defects.

Acts that are carried out in violation of the rules, that obstruct the exercise of a right to judicial protection or impede the Prosecutor in carrying out of his/her duties will also be null and void.

Article 77. Correcting defects (*Saneamiento*).

[The court] should remove all formal defects immediately, superseding the order and rectifying the mistake or carrying out the act omitted on its own authority or at the request of the interested party.

A judge who notices a formal defect that can be corrected at whatever stage [of the prceedings], appellate or first instance, will inform the interested party and set a period of no longer than three days to correct it. If the formal defect is not corrected within the time limit granted, the court will decide the matter.

At any time, the court, acting on its own authority or at the request of a party, may correct purely formal errors contained in his/her acts or decisions, always respecting the rights of the parties.

An order will be considered corrected when, irrespective of the defect, it has achieved its purpose with respect to all the interested parties.

Article 78. Ratification [of prior defective acts]. (*Convalidación*)

Formal defects that affect the Prosecutor, the victim or the offended party will become valid when:

I. [The parties] have not requested the correction while the order is being issued;

II. Within twenty-four hours of the order being issued, no [party] who was not present at the time the order was issued has requested that the order be corrected. If because of the nature of the order, timely notice of the defect was impossible, the interested party must object within twenty-four hours after notice is given; or

III. [The parties] have accepted the effects of the order, expressly or tacitly.

Article 79. Declaration of nullification.

When it is not possible to correct an order, the Judge, acting on his/her own authority or at the request of a party, in a decision grounded in law and fact, will declare the order null and void or expressly draw attention to [the error] in the corresponding decision, and in addition, will specify what other orders are also nullified because of their relation to the nullified order, and, if possible, will order that [those orders] be superseded, corrected or ratified.

TITLE THREE

LEGAL ACTIONS

CHAPTER I
CRIMINAL PROSECUTION

SECTION 1
PRACTICE

Article 80. Criminal Prosecution.

A Criminal prosecution is a public proceeding. It is the responsibility of the State to exercise this function through the Prosecutor, without prejudice to the role that this Code grants to the victim or the offended party.

SECTION 2
OBSTACLES TO PROSECUTION

Article 81. Prejudice.

Following the investigation, the Preliminary Judge, at the request of the Prosecutor, will stay the case when, under the law, the matter to be resolved in the criminal prosecution depends on the outcome of another proceeding. [The stay will remain in effect] until a final judgment has been issued in the latter case.

This stay will not prevent the performance of acts that are urgent or are strictly necessary in order to protect the victim or offended party or the witnesses or to establish circumstances that prove the crime or the defendant's participation in it and that might [otherwise] disappear.

SECTION 3
ENDING THE CRIMINAL PROSECUTION

Article 82. Reasons for ending the prosecution.

Without prejudice to other provisions of the Criminal Code, the following are reasons for ending a prosecution:

I. Payment before trial of the maximum fine provided for as a sentence, when the crime is one of the crimes that can be punished with alternative punishment and the payment satisfies the [amount required for] restitution for damages.

II. The acceptance of a plea agreement (*criterio de oportunidad*)[11] in accord with the cases and the forms established in this Code;

III. The completion of a stay of the evidentiary proceedings (*suspensión del proceso a prueba*)[12] that has not been revoked; and

IV. The fulfilliment of reparation agreements.

SECTION 4
PLEA AGREEMENT

Article 83. Legal procedural principles and proper circumstances

The Prosecutor must prosecute all cases that merit it, in accord with the provisions of law.

However, the Prosecutor may decline to prosecute, fully or partially, or may limit the prosecution to one or several criminal acts or to one of the persons who participated in carrying out the crime, when:

I. The case involves a socially insignificant or *de minimius* crime or minimal culpability of the defendant, unless [such a disposition] would seriously affect a public interest or [the crime] has been committed by a public servant en carrying out his/her responsibilities or because of them.

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[11] The *criteria de oportunidad* , literally "the criteria for opportunity," introduces the concept of an agreement to reduce or dismiss charges under specified conditions as an alternative to pursuing the criminal investigation and trial (in sum, a plea agreement). It is a new concept and a sharp departure from the earlier rule that all criminal matters must be pursued until there is a conviction or acquittal. Throughout this text the phrase "*criteria de oportunidad*" is translated as "a plea agreement to reduce or dismiss charges," or simply "a plea agreement." It is discussed in detail at Articles 83-86.

[12] A *suspensión del proceso a prueba,* a stay of the evidentiary proceedings, may be entered as an alternative disposition for the case. It is similar to pretrial diversion, requiring the defendant to conduct him/her self in an exemplary manner for a set period of time, after which the criminal charge is extinguished. It is discussed in detail at Articles 201, *et seq*.

[This disposition of the case] may not be used in cases involving crimes against sexual freedom and security or involving family violence because that would seriously affect a public interest.

II. The case involves criminal organizations, crimes that seriously affect fundamental legal interests or involves a complex investigation, and the defendant materially assists with the prosecution, provides essential information to prevent the crime from continuing or other crimes from being perpetrated, helps to clarify the crime being investigated or [identify] others involved, or provides information that would be useful to prove the participation of other defendants who have supervisory or administrative functions within the criminal organization. The crimes that are the basis for the prosecution that is being declined must be significantly less serious than those [crimes] the prosecution of which he/she has facilitated or [those crimes] the continuation of which has been avoided;

III. As a consequence of the crime, the defendant has suffered severe physical or psychological damage that would make the imposition of a criminal penalty disproportionate [to the harm done]; or

IV. The punishment or the security measure that could be imposed for the crime has been rescinded, or is unimportant when one considers the penalty or security measure already imposed or which is expected to be imposed for other crimes, or that has been imposed or that would be imposed in a proceeding in another jurisdiction.

The Prosecutor shall use [his/her power] to agree to dismissal or reduction of charges and other discretionary powers objectively, without discrimination, weighing the circumstances of the individual case according to the general criteria in effect that have been established by the State Attorney General.

In cases in which damage [from the crime] is verified, this should be compensated beforehand in a reasonable manner.

Article 84. Time limits.

A plea agreement may be implemented until the order opening the oral trial is issued.

Article 85. Decisions [to enter a plea agreement] and supervision.

The decision of the Prosecutor to implement a plea agreement must be grounded in law and fact, and will be communicated to the Attorney General or the

person that he/she designates, so that the person who reviews it may may adjust it to the general policies of [the Attorney General's Office] and the standards promulgated with respect to such matters.

If the decision to implement the plea agreement is approved, the victim or the offended party or the complainant, as applicable, may object before the Preliminary Judge, within three days of receiving notice. If an objection is filed, the Judge will convene a hearing with the parties to resolve the matter.

Article 86. Effects of a plea agreement.

If the agreement is implemented, it will end the criminal prosecution with regard to the author [of the crime] or participant for whose benefit [the agreement] is made. If the decision was based on the lack of significance of the crime, the benefit will extend to all those who were involved under the same circumstances.

Neverthe less, in cases falling within sections II and IV of Article 83, with regard to to the crimes and persons for whose benefit the plea agreement is implemented, the criminal prosecution will be suspended for up to fifteen calendar days after final judgement, at which time, at the request of the Prosecutor, the Judge should rule definitively on ending that prosecution.

If the collaboration referred to in section II of Article 83 involves giving false information, or [information] is provided with intent to obstruct the investigation, the Prosecutor may reinstate the proceedings at any time.

CHAPTER II

REPARATIONS FOR DAMAGES

Article 87. Liability for damages

The demand for reparation for damages chargeable to the defendant shall be made by the Prosecutor in the same criminal proceeding [as the charge].

TITLE FOUR
CRIMINAL JURISDICTION

CHAPTER I
JURISDICTION AND JOINDER

Article 88. Extension [of jurisdiction].

The territorial personal jurisdiction of the Preliminary Judges and those of

the Trial Courts for oral trials may be extended by agreement of the full State Supreme Court. [13]

Article 89. Jurisdictional rules

To determine the territorial jurisdiction of the judges, the following rules will be observed:

I. Judges will have jurisdiction over those criminal acts committed within the judicial district where they perform their duties, except as otherwise provided by this Code. If there are several judges in the same district, they will divide their tasks equitably, in accord with the distribution system established for that purpose.

II. When there is no record concerning where the crime was committed, [judges] will have jurisdiction in the following order:

a) The Judge or the Trial Court for the jurisdiction in which material evidence was found;

b) The [Judge or the Trial Court] for the jurisdiction where the defendant was arrested;

c) The [Judge or the Trial Court of the jurisdiction] where the defendant resides; and

d) The [Judge or the Trial Court of the jurisdiction] that is ready to proceed. As soon as the place of the commission of the crime is established, the case will be sent forward to the respective judge, together with the defendants and any recovered property.

III. When the crimes were committed outside the State and continued within [the State] or they had an impact within [the State] the judicial authority having jurisdiction will be the one where the crime continued or its effects were felt.

IV. With regard to continuing crimes, when the acts in themselves constitute the crime or crimes being charged, whichever judicial authority within whose jurisdiction criminal acts have been committed shall have jurisdiction to handle the case.

Article 90. Jurisdiction in cases of an appeal and annulment (*casación*).

When, because of an appeal and remand, a trial or a judgment is nullified, the Trial Court where the challenged decision was issued shall have

[13] *El Pleno del Supremo Tribunal de Justicia del Estado* is the full State Supreme Court, assembled in plenary session, as distinct from a smaller panel of that Court's judges.

jurisdiction, but it shall be composed of different judges [of that Court].

Article 91. Lack of Jurisdiction.

A judicial authority that believes it lacks jurisdiction of a case will forward the case file to the authority believed to have jurisdiction after carrying out [any] procedures that are urgently required.

If the authority to which the proceedings are forwarded believes it also lacks jurisdiction, it will send the proceedings to the State Supreme Court so that it may issue its decision on the matter.

Article 92. Effect [of jurisdictional conflicts]

Jurisdictional conflicts will not stay the proceedings if these conflicts are raised before the date set for the intermediate hearing.

Article 93. Related cases.

Criminal matters are related when:

I. The case involves one action that results in more than one distinct crime (*concurso ideal*);

II. The crimes charged have been committed simultaneously by various persons acting in concert or when there had been an agreement [among the defendants], even though they took place at different times and places,

III. A crime has been committed in order to facilitate or perpetrate commission of another, or to obtain a benefit or impunity for the author or others; and

IV. Crimes have been have been committed in response to each other.

Article 94. Jurisdiction in related cases.

When cases are related, the court will have jurisdiction that:

I. Has jurisdiction to judge the crime punishable with the most severe penalty.

II. If the crimes have the same penalty, that has jurisdiction over the crime committed first; or

III. Is ready first, if the crimes were committed simultaneously or there is no proper record of which was committed first.

Article 95. Joinder of trials (*Acumulación de juicios*).

If several different charges have been prepared in relation to the same act that was the basis for a charge against various defendants, the court may order, even on its own authority, that there be a single trial, so long as that would not cause procedural delay.

Article 96. Extension of Jurisdiction.

Criminal Trial Courts also have jurisdiction to examine civil and administrative questions when they are presented in order to better understand the matter being investigated, when they appear to be so closely tied to the crime that it is rationally impossible to separate them, and when the effect of deciding them would be a determination of whether the defendant committed the crime.

CHAPTER II
RECUSALS (*EXCUSAS Y RECUSACIONES*)[14]

Articule 97. Reasons for Recusal.

The judge must recuse himself from a case when:

I. In the same case, he/she has served as the Preliminary Judge or has issued or has participated in issuing the judgment.

II. He has participated [in the case] as a representative of the Prosecutor, the defense attorney, the accuser or the complainant, has acted as an expert, technical consultant or has knowledge of the matter under investigation as a witness, or has had any direct interest in the proceedings;

III. If he/she is a spouse of, has lived more than two years with or is a relative by blood or marriage within the third degree, of any interested person, or if any [interested party] lives with him/her or has lived under his/her charge;

IV. If he/she is or has been a protector or guardian of or has been under the guardianship or protection of any interested party;

V. If he/she, a spouse, a person with whom he/she has lived more than two years, his/her parents or children, has a previously-filed legal matter pending with [one of the interested parties], or he/she is a partner or associated with one of the interested parties, unless it is through a corporation;

[14] In Spanish, the reflexive verb "*excusarse*" or the transitive "*excusar*" are used when a judge recuses him/her self, and "*recusar*" and "*recusaciones*" are used when a judge is removed from a case by another judicial authority. This translation uses the reflexive or passive voice of the same verb "to recuse" to cover these two possibilities.

VI. If he/she, a spouse, a person with whom he/she has been living for more than two years, parents, children or other persons that live under his/her or her charge, are creditors, debtors or sureties of any of the interested persons;

VII. If, before the proceedings began, he/she has been the accuser or complaining witness against any interested party, or has been accused or complained against by them;

VIII. If he/she has provided advice or expressed his/her opinion extra-judicially on the case.

IX. If he/she is a close friend of or has expressed enmity for any of the interested parties.

X. If he, a spouse, a person with whom he/she has been living for more than two years, his/her parents, children or other persons living under his/her care, have received any benefits of significance from any of the interested parties or if, after the initiation of the case, he/she has received presents or donations, even if they have little value;

XI. If a spouse, a person with whom he/she has been living for more than two years, or any relative, by blood to the fourth degree or by marriage to the second degree, has participated as a judge in the case; and

XII. For any other other reason, based on serious considerations, that might affect his/her impartiality.

For purposes of this Article, interested persons are the defendant and the victim or offended party, as well as his or her representatives or defense attorneys.

Article 98. Procedure for recusal.

The Judge who recuses himself will forward the proceedings, together with a decision based in law and fact, to the [judge] who will replace him, in accord with the rules provided for in the Organic Law of Judicial Power of the State. The [successor judge] will evaluate the case immediately and will prepare the matter to go forward, without prejudice to his/her also sending the [case] to the Supreme Court to resolve, if he/she believes that the recusal was without [legal] basis. [If the successor judge agrees to the recusal], the matter will be resolved without being forwarded.

Article 99. Involuntary recusal.

The parties may request that the Judge be recused when they believe that one of the [previously listed] reasons exists for him/her to recuse him/herself.

Article 100. Time and manner in which to request a recusal.

In preparing a request to recuse, under penalty that it will not be admitted, [the party requesting the recusal] will describe, in writing, the basis of the request and the evidence that is being offered in support.

The request for recusal will be prepared within forty-eight hours after learning of the basis for it. During the hearing, the request for recusal will be argued orally, under the same conditions of admissibility as the written presentations and a record will be made of the reasons [for the recusal].

Article 101. Recusal request procedure.

If the Judge accepts the request for recusal and the reasons for his/her recusal persist, he/she will follow the procedures established for recusing him/herself. In the contrary case, he/she will forward the written request for recusal to the Supreme Court , together with his/her response to each one of the reasons for recusal; if the judge is a member of an Appellate Court (*Tribunal Colegiado*) , then he/she will ask that [the request] be rejected by the rest of its members.

If it is considered necessary, [the Court] will hold a hearing within three days, in which it will receive the evidence and notify the parties. The Supreme Court will decide the matter within twenty-four hours after the hearing or receipt of the case file. There will be no appeal from their decision.

Article 102. Effects on the acts.

A judge who recuses himself from a case, as well as one who has agreed to the basis for his/her recusal, may only issue those urgent orders that cannot be delayed.

Article 103. Request to recuse judicial aides/assistants. (*auxiliares judiciales*)

To the extent applicable, the same rules will govern those persons who have any function as judicial aides in the proceedings. The judicial body for the jurisdiction in which they operate will determine the basis for the request immediately and will resolve it appropriately.

Once the request has been determined to be reasonable and the public servant has recused him/herself or has been recused, he/she will separate him/herself from the matter.

Article 104. Effects.

When the recusal or request to recuse is accepted, all acts done thereafter by that public servant will be vacated, except for those urgent acts that could not be delayed.

The participation of new public servants will be final, even if the reasons for

the earlier recusal [of the original public servant] disappear.

Article 105. Lack of probity.

A Judge who fails to recuse himself from a matter when there is a legal basis for him/her to do so, or who does so when a legal basis is clearly lacking, as well as a party that makes a motion for recusal maliciously or in a manner that is manifestly without basis, will become liable for a serious infraction, without prejudice to any civil, criminal or other liability that may be applicable.

TITLE FIVE
PROCEDURAL MATTERS

CHAPTER I
THE PROSECUTOR AND AUXILIARY BODIES

Article 106. Functions of the Prosecutor.

The Prosecutor will prosecute a criminal case in the manner established by law and will carry out those procedures that are relevant and useful to determining whether a criminal act has been committed and the person(s) responsible. For those acts that require it, he/she will direct the investigation under court supervision. In fulfilling his/her functions, the Prosecutor will supervise the police to ensure that they comply with the requirements of the law in carrying out their investigation.

Article 107. Enforcement power.

For purposes of carrying out the procedures ordered by the prosecutor exercising of his/her functions and within the limits established by the Federal and State Constitutions, international treaties ratified by Mexico and the laws derived from them, the prosecutor may use his/her discretion to order any of the following measures:

I. [Issuance of] a warning (*Apercibimiento*)
II. Participation of the police
III. A fine [in the amount of] ten to two hundred days' salary.

Article 108. Responsibility for the evidence.

The Prosecutor will be responsible for the evidence.

Article 109. Objectivity and the duty of good faith.

Throughout the proceedings, the Prosecutor should act with absolute good

faith toward the defendant and his/her defense attorney, the offended party and whatever other parties there are to the proceedings. Good faith includes the obligation to provide truthful information regarding the completed investigation and the information obtained and the obligation not to hide from the parties any evidence that might be favorable to their position, above all when any of this evidence is not being incorporated into the proceeding.

In this sense, the investigation to prepare the criminal case should be objective and focus on the evidence [supporting] the charge as well as that absolving [the defendant]. [The Prosecutor] should work urgently to gather evidence supporting conviction and act objectively at all times, with the aim of determining, as well, whether the matter should result in a decision not to continue the criminal prosecution or a *nolle prossequi* [nonsuit]. He/she may also conclude at the oral trial that the defendant should be acquitted or should be convicted of a lesser crime than that advanced in the original accusation, when, in accord with the criminal laws, evidence arises leading to that conclusion.

At the investigative stage, the defendant and his/her defense attorney may ask the Prosecutor to take steps to verify the absence of a punishable crime or the existence of circumstances that rule out [prosecution of] the crime or would attenuate its punishment or [the defendant's] guilt.

Article 110. Formalities.

The Prosecutor should base his/her orders and decisions on law and fact.

Article 111. Interstate cooperation..

When criminal activities are carried on, in whole or in part, outside the territory of the State [of Chihuahua] or are imputed to persons linked to an organization that is national, regional or international in character, the Prosecutor will coordinate [the investigation] within the framework of the national or state public security systems, in order that joint teams may gather information and may investigate [the case] with other authorities with jurisdiction, as appropriate. Agreements for joint investigation should be approved and supervised by the State Attorney General.

Article 112. Recusal and requests to recuse.

Prosecutors shall recuse themselves and may be recused for the same reasons as those established for judges, except for [that provision requiring recusal because they] have participated in the case as accusers.

The State Attorney General or the public servant to whom he/she delegates that authority will decide on the recusal or request for recusal, first carrying out such investigation as he/she deems appropriate.

SECTION 2
THE POLICE

Article 113. Functions of the public security forces [police].

Members of the public security forces other than the investigative police (*policía ministerial*)[15] will gather the necessary information regarding criminal conduct of which they are aware, giving immediate notice to the Prosecutor; they will prevent those acts that could lead to further harm; they will detain *en flagrancia* a person who is carrying out an act that could constitute a crime; they will identify and arrest defendants who have been charged under a judicial or prosecutor's warrant.

In cases of family violence and crimes against sexual freedom and security, they should apply the protocols and special instructions issued by the Secretary of Public Security in order to adequately protect the rights of the victims.

When the public security forces mentioned above are the first to learn of the criminal act, they should exercise powers provided for in Article 114, sections I,III,IV,V,VII and VIII of this Code, until the Prosecutor or the investigative police enter the case. Once they have entered the case, the [public security forces] will inform them of what has occurred and will turn over the instrumentalities, objects and material evidence that they have secured; all that they have done should be described in an informative report.

They will also act as assistants to the Prosecutor or the court and acting under express instructions will gather that underlying evidence requested of them.

In order to protect the rights [of affected persons] and the investigation, the police forces referred to in the present Article may not inform any of the media nor any person of the identity of the detained persons, defendants, victims or offended parties, witnesses, nor of other persons whom they encounter or who could be tied to the investigation of a crime.

Article 114. Powers of the investigative police.

The investigative police will have the following powers:

I. To receive notice of the facts that presumably constitute elements of crimes and to gather information on the same. In such cases, the police will immediately inform the Prosecutor;

II. To confirm information that they receive that comes from an unidentified source and to make a record in the register dedicated to such matters,

[15] The *policía ministerial*, translated as "investigative police," are a special police force that serves under the direction of the Prosecutor and is charged with carrying out a criminal investigation once the case has been brought to the attention of the Prosecutor or has been brought to them directly. See Article 114.

where they will note the day, the hour, the means [by which they received the information] and the participating public servant's identifying information.

III. To provide the assistance required by the victims or offended party and to protect witnesses; in cases of family violence or crimes against sexual freedom and security, in order to adequately protect the rights of victims, they should follow the protocols or special instructions issued by the State Attorney General;

IV. To take care that evidence and instrumentalities of the crime are preserved. To achieve this purpose, they will prevent all persons not involved in gathering evidence for the investigation from gaining access [to the crime scene] and will proceed to seal the area, if they are dealing with a closed location, or to isolate it, if they dealing with an open area; they will prevent the altering or erasing of any traces or vestiges of the crime or, to accomplish this, will remove the instrumentalities [of the crime], until expert personnel are available to participate;.

V. To Interview witnesses who who would presumably be useful in discovering the truth [of what occurred]. A record will be made of the interviews in the register of police actions taken, which will have no evidentiary value in itself;

VI. To carry out procedures aimed at physically identifying of the authors and participants in the crime;

VII. To gather data that can be used in identifying the defendant;

VIII. To gather all urgently needed information that could be useful to the Prosecutor; and

IX. To make arrests in those cases authorized by the Federal Constitution.

When a judicial order is required to fulfill these responsibilities, the police will inform the Prosecutor in order that he/she may request one.

Article 115. Supervising of public security forces by the Prosecutor.

The Prosecutor will supervise the public security forces when they provide assistance to the investigation. The public security forces should always carry out the orders of the Prosecutor and those [orders] given them by the judges during the proceedings in the most expeditious form and manner possible, acting always within the boundaries of the law, without prejudice to the administrative authority of which they are a part.

That administrative authority may not revoke, alter or delay an order issued by the representatives of the Prosecutor or by the judges.

Article 116. Communications between the Prosecutor and public security forces.

During the investigation of a crime, all communications between the Prosecutor and the public security forces should be carried out in the most expeditious form and manner possible, without prejudice to the information being included in the corresponding police report.

Article 117. Rules of conduct.

The police will follow the formal procedures established for the investigation and will subordinate their orders to the instructions issued by the Prosecutor, without prejudice to the powers that this Code gives them to gather and process all relevant information in order to clarify the facts.

The police will act in accord with the Principles of Performance for Public Security Forces as established in the Law on State Public Security.

Article 118. Disciplinary power.

Members of the public security forces who violate legal orders or regulations or omit or delay in carrying out an act that falls within their investigative responsibilities, or who perform [such act] negligently, will be penalized according to the organic law [regulating their conduct] (*su ley orgánica*) . When they act under instructions of the Prosecutor and are not members of the investigative police, the State Attorney General and the judges, as applicable, may request the appropriate authority to apply the sanctions established here, when the police authorities do not fulfill their disciplinary responsibilities themselves.

CHAPTER II
THE VICTIM OR OFFENDED PARTY

Article 119. The victim.

The term “victim” includes:

I. A person who has been directly affected by the crime;

II. Groups whose collective or broad interests are affected by the crime, so long as the object of the crime is directly tied to those interests; and

III. Indigenous communities, in cases involving crimes that involve discrimination or genocide against their members or cause reduction of their population, depradation of their habitat, contamination of their environment, economic exploitation or cultural alienation.

Article 120. The offended party.

In case of death of the victim, the following persons, in order of priority, will be considered to be the offended party (parties):

I. The spouse or a person who had lived continuously with the victim for at least two years before the crime was committed;

II. The economic dependents.
III. Descendants by blood or marriage;
IV. Ascendants by blood or by marriage; and
V. Collateral relatives by blood or marriage to the second degree.

Article 121. Rights of victims or the offended party.

In addition to those rights established in the Federal Constitution, International treaties ratified by Mexico and other secondary laws derived from them, the victim or the offended party will have the following rights:

I. To participate in the proceedings in accord with the provisions established in this Code;
II. To have access to and to obtain a copy of [the proceedings], except as established by law;
III. To have the Prosecutor receive from him/her all information and evidence that he/she may have, or to become an auxiliary accuser (*acusador coadyudante*),[16] for which purpose the Prosecutor may name an attorney in law, authorized under the Law on Professions of the State of Chihuahua, to represent him/her;
IV. To be informed of decisions that end or suspend the proceedings, so long as he/she has so requested and his/her residence has been made of record;
V. To be heard before every decision that would order the end or suspension of the criminal proceedings and dismissal of the case, so long as he/she has so requested, unless the dismissal is ordered in an order denying probable cause to hold the defendant for prosecution.
VI. If [the victim or offended party] is present at trial, [the right] to speak following closing arguments and before the defendant is granted his/her right to makes the final statement;
VII. If age, physical or psychological condition makes it difficult to appear before whatever authority during the criminal proceedings, [the right] to be questioned or to participate in the procedure for which he/she is summoned from the place where the person is currently located;
VIII. To receive legal assistance and special protection of his/her physical or psychological well-being, including for his/her immediate family, when he/she receives threats or is at risk because of the role that he/she plays in the criminal proceedings.
IX. To request the reopening of the investigation there has been an order temporarily archiving it;
X. To appeal a dismissal of the case;

[16] The *Acusador coayudante*, translated as "auxiliary-accuser" is a role assigned to the victim or offended party, allowing him/her to serve during most parts of the proceedings as an auxiliary prosecutor, whose functions are described Article 301.

XI. To not be the subject of news by the mass media nor be made known to the community without his/her consent; and
XII. Other [rights] as are provided for by law for their benefit .

The victim or the offended party will be informed of their rights on the first occasion on which they participate in the proceedings.

Article 122. The auxiliary-accuser.

Within the period set forth in Article 301, the victim or offended party may designate him/herself as the auxiliary-accuser, and in such case will have that role for all legal purposes. If there are several victims or offended parties, they shall name a common representative, and if they cannot agree, the judge will name one of them [to serve in that role].

CHAPTER III
THE DEFENDANT

SECTION 1

GENERAL RULES

Article 123. Definition.

A person will be referred to as a defendant from that point in time when there are [sufficient] facts to indicate, at the least, that the person is possibly responsible for the crime. A person will be referred to as a convict when a final judgment of conviction and sentence has been imposed.

Article 124. Rights of the defendant.

In addition to the rights established under the Federal Constitution, International Treaties ratified by Mexico and other secondary laws deriving from them, the defendant will have the following rights:

I. To know, from the beginning of the case, the cause or reason for his/her detention and the public servant who ordered it, and, as applicable, to be shown the order issued against him;
II. To be informed of his/her right to not make any statement and to be advised that anything he/she says about the case may be used against him/her;
III. To be in immediate and effective communication with the person, association, group or entity that he/she wishes to inform of his/her apprehension;

IV. From the beginning of the proceedings, to be represented by the defense attorney designated by him/her, his/her relatives or the group to whom he/she communicated the fact of his/her apprension and, in the absence of [such defense attorney, to be represernted] by a public defender and to meet with his/her defense attorney in strictest privacy;

V. To be assisted by a translator on interpreter at no cost, if he/she does not understand or speak Spanish;

VI. To be brought before the Prosecutor or judge immediately after being detained, in order to be informed and and advised of the acts imputed to him;

VII. With the assistance of his/her attorney, to decide whether he/she will make a statement, and to consult with his/her defense attorney beforehand and to have him/her present when he/she gives a statement and at other proceedings that require his/her presence;

VIII. Not to be subjected to treatment that would affect or alter his/her free will or would threaten his/her sense of dignity;

IX. Not to be the subject of mass media reports or to be brought before the public, if that would damage his/her sense of dignity or pose a risk to him/herself or his/her family

X. Not to have any measure used against him/her that restricts his/her freedom of movement during the proceedings, without prejudice to [imposition of] any surveillance measures the judge believes warranted in special cases; and

XI. From the moment of his/her apprehension, to request social welfare assistance for minors and disabled persons for whom he/she is responsible.

Upon detaining a person and before interviewing that person as a defendant, the police will immediately advise him, in comprehensible form, of the rights set forth in sections II, III, IV, V, VI, VIII, IX and XI of this Article. The Prosecutor must inform the defendant of his/her fundamental rights at the first proceeding in which he/she participates. At the first judicial proceeding, the Judge will verify that the defendant has been informed of his/her fundamental rights and, if not, he/she will so advise him/her in a clear and comprehensible manner.

Article 125. Identification.

The defendant will supply the data necessary for him/her to be identified and will produce an official document that reliably authenticates his/her identity.

If he/she does not provide [the required data] or if it is otherwise necessary, the relevant State and federal records will be requested, without prejudice to an expert verifying [the defendant's] identity using his/her personal data, fingerprint impressions and identifying marks. Resort also may be made to eyewitness and

other means of identification that may be useful.

Doubt with respect to the data obtained will not alter the course of the proceedings and errors related to such data may be corrected at any time, even during the prosecution of the criminal case.

These measures may be employed even against the defendant's will.

Article 126. Domicile.

At the time of his/her first appearance [in the case], the defendant shall indicate his/her place of residence, place of work, the principal location of his/her business or the place where he/she may be found, and the the place and means for him/her to receive notice. The defendant must notify the Prosecutor or the judge of any changes.

False information regarding his/her identification information will be considered as evidence of [the defendnt's] intention to flee prosecution.

Article 127. Subsequent disability.

If, during the proceedings, the defendant develops a mental disorder that makes him/her unable to appreciate or understand the proceedings, or to behave in conformity with his/her will and understanding, the proceeding will be suspended until the disability disappears. After an expert examination ordered by the Judge and without prejudice to any expert examination the other parties may offer, the Judge will decide the issue of incapacity and any treatment, if appropriate. Reasonably and under the strictest supervision of the expert, a determination will be made in the expert's report concerning the nature of the [defendant's] incapacity, his/her prognosis, any appropriate treatment and whether [the defendant] should be at liberty or committed (*en interamiento*). If the median sentence of imprisonment for the applicable crime has passed and the defendant has not recovered his/her mental health, the judge will dismiss the case.

Article 128. Commitment for observation.

If it is necessary to commit the defendant in order to carry out an expert examination to determine whether he/she is mentally incompetent, at the request of the experts, the judge may order [the commitment] only when the probability exists that the defendant has committed the crime and that this measure would not be disproportionate to the penalty or security measures that could be imposed on him/her [for the crime].

Commitment for this purpose may not be for longer than ten days and may only be ordered if it is not possible to prepare the expert's report using a means less restrictive of [the defendant's] rights.

Article 129. Mandatory mental examination.

The court may order a psychiatric or psychological examination of the defendant when:

I. The defendant is more than seventy years of age; or
II. The Trial Court believes that [an examination] is indispensable in order to establish the defendant's capacity to be found guilty of the crime or in order to establish the need to suspend the proceeding, pursuant to Article 127.

Article 130. Examinations of persons for evidence.

If it becomes necessary for the investigation to verify critical circumstances [relating to the crime], body examinations, gathering of biological evidence, extractions of blood or other analogous procedures may be performed on the defendant, on the person affected by crime or on other persons, with their consent, so long as there is no danger to the health or personal dignity of the subject of the examination and [the examination is done] for purposes of the criminal investigation.

If consent is denied, the representative of the Pubblic Prosecutor may request authorization from the Judge, who will decide the matter at a hearing with the reluctant party.

The Judge will authorize the examination so long as it complies with the conditions noted in the first paragraph.

Article 131. Escape from justice.

The court will declare a defendant to be a fugitive from justice when, without just cause, he/she fails to appear when summoned by the court, he/she flees from the place where he/she is being detained or he/she is absent from his/her place of residence without notice, while under the obligation to provide it.

The declaration will be issued by the court.

Article 132. Effect [of the declaration].

A declaration that a defendant is a fugitive from justice stays hearings for presentation of the charges, the intermediate hearing, and the trial, except, as regards the latter case, the [holding of a hearing] to impose a security measure.

The fact that a defendant fails to appear at the hearing on probable cause to hold the defendant for prosecution will not stay that hearing. The hearing will only be suspended as to the fugitive and will continue with respect to those defendants who are present.

A declaration that a defendant is a fugitive from justice will mean that the previously-ordered precautionary measures are modified.

If the defendant appears after he/she has been declared a fugitive from justice and he/she fully explains his/her absence, [the declaration of fugitive status] will be vacated and will produce none of the consequences set out in this rule.

SECTION 2
STATEMENT OF THE DEFENDANT

Article 133. Proper circumstances and competent authority [to receive the defendant's statement].

If the defendant has been apprehended, his/her statement shall be taken immediately or, if not immediately, then within forty-eight hours from the time of his/her arrest.

The defendant will have the right not to give a statement or may give statements as many times as he/she wishes, so long as his/her statement is relevant and is not used as a means to delay the proceedings.

In all cases, a statement given by the defendant will only be valid if he/she gives it voluntarily before the Prosecutor or Judge and is assisted by his/her defense attorney.

If the defendant exercises his/her right to make a statement before the Prosecutor, [the Prosecutor] will inform him/her in detail of the crime attributed to him, together with all the circumstances of time, place and manner in which it was committed, to the extent known; [the Prosecutor also] shall include those [circumstances] that were legally important in correctly classifying the charge, the legal provisions that are applicable and the underlying facts that strongly directed the investigation against him/her.

Article 134. Naming of a defense attorney.

Before the defendant makes a statement regarding the facts, a defense attorney must be named to assist him/her, and he/she will be informed that he/she may request his/her presence and consult with him/her regarding everything related to his/her defense. If a defense attorney is not present, he/she will be given notice immediately by whatever means available that he/she should appear. If [the defendant] has not named a defense attorney or the one named has not been found, or if he/she does not appear, the defendant will immediately be assigned a public defender, who will be given sufficient time to become familiar with the case.

Article 135. Prohibitions.

In no case will the defendant be required to swear to tell the truth, nor will he/she be subjected to any form of coercion or threat, nor will any means be used to force, induce or cause him/her to make a statement against his/her will, nor will charges or counterclaims be prepared in order to obtain his/her confession.

Measures that diminish the defendant's freedom to decide, his/her memory or capacity to understand and to control his/her actions, in particular, abusive

treatment, threats, exhaustion, corporal violence, torture, hypnosis or the administration of psychotropic drugs, as well as any other measures analogous to the preceding which might diminish his/her understanding or alter his/her perception of reality are prohibited.

A promise of a benefit [for making a statement] will only be permissible in the circumstances provided by law.

Questions will be clear and precise and may not be capricious.

Failure to observe the prerequisites regarding the statement of the defendant will prevent its being used against him, even when he/she has given his/her consent to the infringement of a rule or to use his/her statement.

Article 136. Multiple defendants.

When various of the defendants should give statements, their statements will be received in order, without their communicating among themselves until all [the statements have been received].

Article 137. Restrictions on the police.

The police may not receive the statement of a defendant when he/she is under arrest. If [the defendant] indicates a desire to make a statement, [the police] should communicate this fact to the Prosecutor in order that he/she may receive the statement, in accord with the requirements established by law.

Article 138. Powers of the participants.

All participants may point to any failure to observe the legal requirements that occur at the time the defendant makes his/her statement, and, if they are not corrected immediately, to request that their objection be made part of the record.

CHAPTER IV
DEFENDERS AND LAWFUL REPRESENTATIVES

Article 139. Right to select.

The defendant shall have the right to select a defense attorney of his/her choice or a trusted advisor[17] to represent him/her. If he/she does not do so, or if he/she only names the latter, the Prosecutor or the Judge will assign the defendant a public defender at the first proceeding in which [the defendant] participates.

The participation of the defense attorney will not diminish the right of the defendant to prepare requests and make observations on his/her own.

Article 140. Professional qualification.

[17] *Persona de confianza*; see fn. 3.

Only those persons who are experts in law and authorized by law to practice their profession may act as defense attorneys.

Article 141. Participation.

Those persons designated as defense attorneys shall be admitted to the proceedings immediately and without [being subjected to] any application process by the police or the Prosecutor or the Court, as applicable.

Article 142. Subsequent appointment.

During the period of the proceedings, the defendant may name a new defense attorney, but the predecessor attorney may not abandon the defense until the [newly-named defense attorney] appears [at the proceeding].

Article 143. Disqualification.

Those who may not serve as defense attorneys are:

I. Witnesses to the crime;
II. Co-defendants; and
III. Those who have been convicted of the same crime.

Article 144. Resignation and abandonment.

A defense attorney may resign from participation in the defense. In such a case, the judge will fix a period for the defendant to name another. If he/she does not do so, [the defense attorney] will be replaced with a public defender. The resigning defense attorney may not abandon the defense while his/her replacement has not appeared. He/she may not resign during the hearings nor once he/she receives notice of [when the hearing will take place].

If the defender, without justification, abandons the defense or leaves the defendant without technical assistance, a public defender will be named.

When the abandonment occurs before the beginning of the trial, [the court] may reasonably delay the beginning of the trial to allow for adequate preparation of the defense, taking into account the complexity of the case, the circumstances of the abandonment, the effects of the continuance and the soundness of the request [for continuance] by the new defense attorney.

Article 145. Criminal sanctions.

In addition to the penalties set forth in the Criminal Code, the judge in the proceedings abandoned by a defense attorney without good cause will order that the responsible [defense attorney] pay an amount of money that is equivalent to the cost of the hearings that must be repeated or deferred because of his/her abandonment.

For this purpose, the court will take into account the salaries of the

participating public servants and those of the participating private parties.

Those moneys collected as a result of these monetary sanctions will be made part of the Fund for the Administration of Justice.

Article 146. Number of defense attorneys

The defendant may designate [as many] defense attorneys as he/she believes appropriate, but he/she may not be defended simultaneously by more than two in the oral hearings or in the same proceeding.

When two or more defense attorneys participate, notification provided to one of them will be valid with respect to all, and the substitution of one for another will not alter the legal proceedings or time limits.

Article 147. A defense attorney in common.

The defense of several defendants in the same proceeding by a common defense attorney will be permissible only when there is no conflict. Nevertheless, if such [a conflict] is noted, the court will correct it on its own authority and will take the necessary steps to replace the defense attorney.

Article 148. Guarantees for the exercise of the defense.

The securing or the seizure of materials related to the defense, the interception of communications between the defendant and his/her defense attorneys, technical advisers and their assistants, and communications between them and the persons providing them with technical assistance will not be permissible.

Article 149. Interview with the detained persons.

From the beginning of his/her detention, including detention by the police, a defendant who has been detained,will have the right to converse privately with his/her defense attorney.

Article 150. Interview with other persons.

If, in preparation of the defense, the defense attorney needs to interview a person before a hearing, [and that person] refuses to receive him/her, [the defense attorney] may request judicial assistance, giving reasons why the interview is necessary. If the Judge believes the interview is necessary, he/she will issue an order that the [witness] meet with the defense attorney at the place and time that [the witness] decides, or will summon [the witness] to the courthouse in order that the interview may take place in the presence of the judge or his/her designee.

Likewise, before the hearings, the Prosecutor will allow the defense attorney access to the investigation file (*carpeta*) and will provide him/her with copies of the same, when these are previously requested. If the Prosecutor refuses, the

defender may take that denial before the judge, who, after listening to the Prosecutor, may suspend the relevant hearing, if appropriate, without prejudice to his/her applying sanctions against the Prosecutor in accord with Article 156 of this Code.

Article 151. Assistance to the defense.

When there are documents, objects or information, which are necessary to the defense of the defendant and which are in the possession of a third party who refuses to hand them over, the Preliminary Judge, taking into account the claims of the person holding the materials and the defense, will decide in a hearing whether the person holding the materials should show them or provide the information. If, despite having been ordered to provide the document, object or information, the person refuses to hand it over or delays in doing so, the Judge may impose measures to enforce the order or order a search.

The Preliminary Judge, at the request of the defense attorney, also may order a search of locations, in order to find specified objects and documents that could favor the defense. The search warrant and its execution must comply with the requirements set forth in this Code.

CHAPTER V
AUXILIARY PERSONNEL AND DUTIES OF THE PARTIES

SECTION 1
AUXILIARY PERSONNEL

Article 152. Assistants.

The parties may designate assistants to collaborate in their work. In such case, [the parties] will assume responsibility for their selection and supervision.

The assistants may be present at hearings to contribute to the work at the tables where the parties are seated.

Article 153. Technical advisors.

If, because of the particular circumstances of the case, one of the parties believes it necessary to obtain the assistance of a specialist in science, art or a technical field, he/she will propose this to the Court. The technical advisor may accompany the party with whom he/she is collaborating in order to provide technical assistance in cross-examination of experts offered by other parties to the proceedings.

SECTION 2
OBLIGATIONS OF THE PARTIES

Article 154. Duty of integrity and good faith.

The parties should litigate with integrity and in good faith, and not make l merely formal and dilatory arguments or abuse the powers that this Code grants them.

The Judges and the Trial Court will supervise the proceedings to assure that they are conducted in accord with the rules, that procedural powers are properly exercised [and that the parties operate] in good faith.

Article 155. Special procedural rules.

When the nature of the case suggests that it would be appropriate to adopt special measures to ensure that the parties abide by the rules and act in good faith during the proceedings, the Judge or the President of the Trial Court will call the parties together immediately in order to agree on particular rules for the proceedings.

Article 156. Disciplinary procedures.

Except as provided in this Code regarding the abandonment of the defense, whenever it is shown that the parties or their advisors have acted in clear bad faith, have taken steps or assumed positions that are dilatorious or have litigated recklessly, without respect for the Judge or other participants in the hearing, or have disturbed [court] order, the court will punish the misconduct, depending on its seriousness, with a warning, a fine of one to one hundred days' minimum salary, or with detention for a period up to thirty-six hours.

If the latter punishment is imposed, and if it is requested, the person to be penalized will be heard in same hearing in order to decide the matter. With regard to acts occurring outside the hearing, the hearing on the request that the person to be penalized shall take place within twenty-four hours after notice is given.

Whoever is sanctioned will be required to pay the fine within three days.

If the fine is not paid, the court will ask the Office of the State Treasury to enforce the collection.

In cases involving public defenders and Prosecutors, [the facts of] their misconduct will be communicated to their supervisor.

TITLE SIX
PRECAUTIONARY MEASURES

CHAPTER I

GENERAL RULES

Article 157. General principle.

Precautionary measures that are imposed on the defendant are limited exclusively to those authorized by this Code, they are considered exceptional, and they only may be imposed in accord with a written judicial decision, grounded in law and fact, for the minimum time necessary to ensure the presence of the defendant at trial, to prevent obstruction of the proceedings, and to guarantee the safety and physical well-being of the victim or offended party.

A judicial decision that imposes a precautionary measure or rejects one is subject to modification at any stage of the proceedings.

In every case, the Trial Court can proceed on its own authority when [its decision] favors liberty for the defendant.

Article 158. Proportionality.

[The court] shall not order a precautionary measure, when it would be disproportionate to the circumstances of the crime attributed [to the defendant] and the probable punishment.

With regard to a precautionary measure that involves a deprivation of liberty, in no case may it exceed the minimum penalty for the crime in question, nor exceed the period set by Articles 182, section II, and Article183 of this Code.

CHAPTER II
PERSONAL PRECAUTIONARY MEASURES

SECTION 1
ARREST AND DETENTION

Article 159. Basis for detention.

No person may be detained except by order of the judge with jurisdiction of the case, unless [the defendant] was surprised in the act of committing the crime or the case [falls within the definition of] an urgent case.

Article 160. Spontaneous [court] appearance [by the defendant].

The defendant against whom an arrest warrant has been issued may appear before the judge with jurisdiction of the case to request that the formal complaint be presented. Depending on the case, the Judge may order that the defendant remain at liberty and that he/she be exempt from imposition of any personal precautionary measures.

Article 161. Arrest based on a judicial order.

When there is an accusation or complaint, the *corpus delecti* and the probable criminal responsibility of the defendant have been established, the crimes charged carry mandatory penalties involving imprisonment and the defendant's appearance [before the court] could be delayed or difficult to achieve, the Judge, at the request of the Public Prosecutor, may order the arrest of a defendant in order that he/she may be brought before him/her without prior summons, for the purpose of presenting the charges.

He/she may also order the arrest of a defendant whose presence at a judicial hearing was a condition imposed on him/her and who, legally summoned and without justification, did not appear, so long as all the prerequisites set forth in the prior paragraph, except for the last, are present.

The police who execute the arrest warrant will bring the arrested person immediately before the Judge who has issued the order, a copy of which must be provided to the defendant. Once the defendant arrested pursuant to warrant is brought before the Preliminary Judge, he/she will immediately convene a hearing for presentation of the charge.

Article 162. Request for arrest of the defendant.

The representative of the Prosecutor, when requesting in writing the issuance of a warrant for the arrest of the defendant, will describe the crimes attributed to him, which will be supported precisely with relevant records shown to the judge, and will explain the reasons that he/she believes [the request for an arrest warrant] complies with the prerequisites set out in the prior Article.

Article 163. Decision regarding the request for an arrest warrant.

Within the twenty-four hours after the request for an arrest warrant is received, the Judge will decide the matter in a private hearing with the Prosecutor. The Judge may provide a different legal classification of the crimes or the defendant 's participation in them than that submitted [by the prosecutor].

If the request for an arrest warrant does not contain one of the prerequisites as required by the prior Article, the Judge, on his/her own authority, will inform the Prosecutor at the hearing so that he/she may make [the prerequisites] more precise or clarify them. Preventive detention (*la prevención*) will not be authorized when the judge considers that the facts put forth by the Prosecutor in his/her request do not conform [with the elements constituting the crime].

Article 164. Detention during commission of a criminal act (*de flagrancia*).

Any person may detain another person who is caught in a criminal act, but he/she should turn the detained person over immediately to the closest police

authority, who will with the same promptness turn him/her over to the Prosecutor.

The police will be required to arrest those persons caught committing a crime. In such case, or when they receive a detained person from whatever other person or authority, they should immediately put him/her at the disposition of the Prosecutor.

When a person is detained for an act that might constitute a crime, but for which a complaint from the victim is required, the person who must make [the complaint] will be immediately informed, and if this person does not present him/herself within a period of twenty-four hours [to make the complaint], the detainee will be released immediately.

In all cases, immediately after the detained person is brought before him/her, the Prosecutor should examine the circumstances under which the arrest was made. If [the arrest] did not meet the requirements of the law, he/she will immediately release the person and in such case will make sure that the appropriate request for disciplinary or criminal sanctions is made.

Article 165. Predicates for a finding that the defendant was in the act of committing a crime.

Being in the act of committing a crime means:

I. The person is surprised at the moment [the crime] is being committed;

II. Immediately after committing [the crime], the person is pursued or is found with objects or evidence that provide a likely basis to assume that the person has just participated in commission of a crime;

III. Immediately after the person committed the crime, the person is identified by the victim, an eyewitness to the crime or another person who had participated with the person in the commission of the crime, and a period of forty-eight hours has not passed between the commission of the crime and the arrest.

Article 166. Predicates for finding that a case is urgent.

An urgent case exists when:

I. A well-founded suspicion exists that the defendant has participated in one of the crimes classified as *delitos graves*[18] in this Article;

II. There is a well-founded risk that the defendant will flee justice; and

III. Because of the hour, place or other circumstance, the Prosecutor cannot appear before the court to request an arrest warrant.

[18] *Delito grave* literally translates as "serious offense." It is defined by the length of the median sentence (no less than seven years). Under the old Code, a charge of a "delito grave" required pre-trial detention. That is no longer true, but the classification still has legal import for purposes such as determining whether a case may be defined as "urgent" for the purposes of the prosecutor obtaining initial detention without a judicial order.

For the purposes of this Article, those crimes that have a median criminal penalty of no less than seven years' incarceration are classified as serious crimes.

Article 167. Detention in urgent cases.

Upon satisfying the predicates set forth in the prior Article, the Prosecutor may order in writing that the defendant be arrested, setting forth in the order the prior history of the investigation and the evidence that has caused him/her to proceed.

The police who execute the arrest order in an urgent case ought to present the defendant immediately before the Prosecutor who has issued the order. The Prosecutor should quash the arrest when he/she does not intend to request preventive detention, without prejudice to his fixing a bond to guarantee the defendant's appearance before the court. In a contrary case, he/she will order that the detained person be taken before the Judge within the period referred to in paragraph seven of Article 16 of the Federal Constitution, counting from the time when the arrest was effected.

Article 168. Detention hearing.

Immediately after the defendant arrested in the act of committing the crime or in an urgent case is put at the disposition of the Preliminary Judge, the judge shall convene a hearing, in which he/she will inform [the defendant] of his/her constitutional and legal rights, if he/she has not earlier been informed of these, and will proceed to consider the issue of detention, ratifying it if he/she finds that it is in accord with law or, if otherwise, ordering [the defendant's] release under conditions provided by law.

The Prosecutor shall attend this hearing, and shall explain to the judge the reasons for the detention. The absence of the Prosecutor from the hearing will be a basis for release of the detainee.

SECTION 2

OTHER PERSONAL PRECAUTIONARY MEASURES

Article 169. [Precautionary] Measures.

Once [the defendant] has been given the opportunity to give an initial statement in the form and under the conditions and during the period set forth in this Code, at the request of the Prosecutor and after hearing his/her reasons, the court may impose the following precautionary measures on the defendant:

I. That he/she post a sufficient financial bond in accord with the provisions of Article 185;

II. That he/she be prohibited from leaving the country, the locality where

he/she resides or the surrounding territory, as set by the Judge;

III. That he/she be obliged to submit himself to the care and oversight of a person or specified institution that will regularly report to the Judge;

IV. That he/she be obliged to present himself periodically before the Judge or the authority that [the Judge] designates;

V. That electronic monitors be attached to him, so long as doing so does not cause injury of damage to the dignity or physical well-being of the defendant.

VI. That he/she be placed under a restraining order (*arraigo*),[19] confining the defendant to his/her own residence or that of another person, without any surveillance or under such conditions as the judge orders;

VII. That he/she be prohibited from attending specified meetings or visiting specified places;

VIII. That he/she be prohibited from socializing with or communicating with specified persons, so long as [such prohibition] does not affect his/her defense rights;

IX. That he be removed from his residence immediately when the case involves women and children or sexual crimes and the victim lives with the defendant;

X. That his/her rights be suspended;

XI. That he/she be committed to a health center or psychiatric hospital, in those cases where the defendant's state of health rmerits it; and

XII. That he/she be held in pretrial detention, unless the crime charged carries an alternative penalty or does not involve a prison sentence.

In any case, the judge may dispense with all precautionary measures when [he/she decides] that the defendant's promise to be present at the proceedings is sufficient reason to disregard the reasons that would support ordering such a [precautionary] measure in conformity with the following Article.

Article 170. Basis for an order.

The Judge may order precautionary measures when the following circumstances are present:

I. The defendant has been given the opportunity to give an initial statement.

II. Taking into account the circumstances of the particular case, a reasonable presumption exists that the defendant presents a risk to society, the victim or the offended party.

[19] *Arraigo* under Mexican law means a restraining order prohibiting the defendant or other person from leaving the jusrisdiction of the Court. It may also include confinement to one's domicile or, under federal law in organized crime cases, confinement at another location dedicated to that purpose.

Article 171. Imposition [of a precautionary measure].

At the request of the Prosecutor, the Judge may impose one or several of the precautionary measures provided for in this Code, depending on what would be sufficient for the case, and issue the necessary orders to guarantee that they are complied with. Pretrial detention may not be combined with other precautionary measures.

In no case is the judge authorized to apply measures inappropriate to their purpose nor to apply others that are more serious than those requested or with which it would be impossible to comply.

Article 172 Risk to society.

A risk to society exists when there is a reasonable presumption that the defendant may become a fugitive from justice or that he/she may obstruct the investigation or the criminal proceedings.

A) In order to decide whether there is a risk that [the defendant] will abscond from justice, the Judge will take the following circumstances into account, among others:

I. His/her ties to the country, based on his/her domicile, customary place of residence, the location of his/her family, his/her business or work and his/her ability to flee the country or hide him/herself. False or inadequate information regarding the place of residence of the defendant provides a basis to presume that he/she will abscond from justice.

II. The seriousness of the damage that ought to be indemnified;

III. The defendant's conduct during the proceeding or in an earlier one as a measure of whether he/she is willing or not to submit himself to a criminal prosecution; and

IV. The possible punishment or security measure that could be imposed.

B) In order to decide whether there is a danger that [the defendant] will obstruct the investigation or the proceedings, the court will take into account, among other circumstances, whether there is sufficient basis to believe that it is probable that the defendant:

I. Will destroy, alter, hide or falsify evidence; or

II. Will try to influence co-defendants, witnesses or experts to not testify or to be reluctant witnesses or will try to persuade others to act in this/her manner.

Article 173. Evidence.

The parties may present evidence in support of imposing, revising, substituting, modifying or removing any personal precautionary measure.

Such proof will be recorded in a special registry, if [the court] does not permit its use in oral argument [at the hearing].

The Judge will evaluate the evidence presented solely as a basis for his decision regarding [imposition of] a personal cautionary measure, in accord with the general rules established in this Code.

In all cases, before deciding the matter, the court shall convene a hearing to hear from all the parties and, if appropriate, to receive the evidence directly.

Article 174. Decision.

A decision that imposes a personal precautionary measure will contain:

I. Personal data regarding the defendant and [that data] that would serve to identify him;

II. A description of the crime and the acts attributed to [the defendant] and a preliminary legal assessment of them;

III. The nature of the measure [to be imposed] and the reasons the judge believes that the prerequisites for the measure are present in the case; and

IV. The final date on which the measure will expire.

Article 175. Restrictions on pretrial detention.

In addition to the the general conditions for imposition of precautionary measures, pretrial detention may only be imposed when there is no reasonable way to prevent the defendant from absconding from justice, the obstruction of the investigation or risk to the victim or offended person through imposition of one or more of the other measures that would be less onerous for the defendant.

Article 176 . Financial Guarantees [Bond].

Upon deciding to apply a precautionary measure consisting of a bond, the Judge will fix the amount and the form of the contribution and evaluate whether it is appropriate. In deciding on the amount of the bond, the Judge shall take into account the nature, form and circumstances of the crime, the characteristics of the defendant, the likelihood that he/she will comply with procedural obligations, and the possible damages and [financial] losses caused to the offended party. The court will weigh the reasons there might be that the defendant would be unable to fulfill his/her obligations and should set a reasonable time for him/her to submit his/her bond.

The bond will be submitted by the defendant or another intermediary by depositing money, valuables, a security or mortgage on his/her properties, free of encumbrances, [bail bonds] payable by a company business dedicated to this sort of commercial activity, a surety from one or more solvent persons or by whatever other suitable means.

The guarantor will be informed of the consequence of failure of the defendant to comply [with its terms] at the hearing at which [the matter of bond] is decided. With prior authorization of the Judge or Trial Court, the defendant and the

guarantor may replace [one guarantor] with an equivalent one.

Article 177. Execution of the bond.

When, without just cause, the defendant fails to fulfill any of the precautionary measures imposed or to comply with any order of the Judge, or fails to appear at a hearing to which he/she was summoned or does not present him/herself to serve a sentence that has been imposed on him/her, the court will require that the guarantor produce the defendant within fifteen days and will advise him/her that if he/she fails to do so or does not explain his/her failure to appear, the guarantee will be made effective. Upon expiration of the period authorized, depending on the case, the Judge will order execution of the bond and will deliver the total amount to the victim or offended party, without prejudice to his ordering the arrest of the defendant at the request of the Prosecutor.

Article 178. Cancellation of the bond.

Unless it has been executed, the bond will be cancelled and the goods securing it will be returned when:

I. The decision that imposed it is revoked;
II. The court orders dismissal or an acquttal; or
III. The defendant surrenders himself for execution of his/her sentence or it should not be executed.

Article 179. Removal [of the defendant] from his residence.

Removal [of the defendant] from his residence must be for a minimum of one month but may not exceed six months. It may be extended for equal periods if the victim or offended party or the Prosecutor provdes reasons justifying it.

After hearing from the Prosecutor, [the period of removal] may be shortened at the request of the victim or offended party. When dealing with victim-minors, termination may be ordered when it is requested by [the minor's] legal representative, after hearing the views of the minor or of a specialist and those of the Prosecutor.

In order to lift a personal precautionary measure, the defendant must promise formally not to participate in any acts that could affect the victim or the offended party and will be warned that more serious precautionary measures could be imposed on him/her.

CHAPTER III
AMENDMENT OF PERSONAL PRECUATIONARY MEASURES

Article 180. Amendment, substitution, notification of and cancellation of

[precautionary] measures.

With the exception of the provisions relating to pretrial detention [below], at whatever stage in the proceedings, when it becomes necessary because the circumstances supporting imposition of personal precautionary measures have changed, the Judge, in a well-founded decision and acting on his/her own authority, may revise, substitute, modify or cancel personal precautionary measures and the circumstances for their imposition, in accord with the rules set forth in this Code.

If a bond was secured by property and another measure is substituted, that [original] bond will be cancelled and, if appropriate, the goods affected will be returned.

Article 181. Amendment of pretrial detention and commitment [orders].

The defendant and his/her defense attorney may request amendment of pretrial detention at any time that they believe that the circumstances for which it was ordered no longer exist. In their request, they should point out new reasons and the background of the investigation and evidence that support their request. If the judge believes that it is necessary to hold a hearing, he/she will do so within forty-eight hours from the time of the request for amendment and at that hearing, as appropriate, will order the continuation or modification [of the pretrial detention] or substitution of another [precautionary measure]. If he/she determines that the request is clearly without basis, he/she will reject it out of hand.

Article 182. Termination of pretrial detention.

Pretrial detention will end when:

I. New evidence in the proceeding shows that the reasons for for the detention no longer exist or it has become advisable to replace [that measure] with another;

II. [The detention period] exceeds twelve months; or

III. The personal condition of the defendant has worsened such that pretrial detention has become a cruel, inhuman or degrading treatment.

Article 183. Extension of the maximum term of pretrial detention.

If the court has issued a judgment of conviction and that [judgment] has been appealed, the maximum term for pretrial detention may be extended for six more months.

When the trial has been been reinstated, the Tribunal with jurisdiction of the appeal, as an exception and on its own authority, may authorize an extension of pretrial detention for up to six months longer than the period provided above.

Once these periods have expired, [the court] may not agree to a further extension.

Article 184. Suspension of the time limits of pretrial detention.

The time limits established bythe prior Articles may be suspended when:

I. The proceeding is suspended due to an order based on a writ of *amparo* .[20]

II. The pretrial hearing is suspended or postponed at the request of the defendant or his/her defense attorney, so long as the suspension or postponement was not done because of a related need to acquire evidence; or

III. The proceeding had to be extended because of evidently dilatorious conduct or events caused by the defendant or his/her defense attorney, as found in a decision of the judge that is grounded in law and fact.

CHAPTER IV
PRECAUTIONARY MEASURES INVOLVING PROPERTY

Article 185. Measures.

In order to assure compensation for possible damages and losses caused by the criminal act, the victim, the offended party or the Prosecutor may request that the Judge impose a precautionary measure attaching property (an order of distraint and seizure).

In the request, the proponent should set forth the role in which he/she appears, the specific damage or loss for which he/she seeks a guarantee, as well as the name of the person [whose property] he/she wants seized, and the factual basis for his/her belief that that person is probably responsible for compensation of the [the claimant's] damages.

Article 186. Attachment prior to charges.

If the precautionary attachment of goods is ordered before the criminal charge has been filed against the person directly responsible for compensating the damage, the Prosecutor should prepare the charge and request the corresponding arrest warrant or request a date for filing the charge within a period no greater than two months. The period referred to will be stayed from the time that a decision to

[20] A writ of *amparo* is similar to a *habeas corpus* proceeding. As in a *habeas corpus* proceeding, the defendant makes a claim for constitutional protection from judicial action. However, unlike a *habeas corpus* proceeding, the defendant need not be in custody or under any restraining measure. Moreover, a request for a writ of *amparo* may be brought at any time and may be brought against a criminal action by a defense attorney even if the defendant has not submitted him/herself to the jurisdiction of the court. Writs of *amparo* are brought in special amparo courts and not in the court with jurisdiction of the criminal case. The losing party may appeal to the Court of Appeals for the Circuit (*tribunal colegiado*).

temporarily suspend the case (*archivo temporal*), to enter a plea agreement (*aplicación de un criterio de oportunidad*) or to dismiss the criminal case (*no ejercisio de la acción penal*) is challenged by the victim or offended party until said objection is definitively resolved.

Article 188. Amendment [of a precautionary measure relating to property].

Once a precautionary measure involving property is ordered, at the request of the defendant or third parties, the court may revise, modify, replace or cancel it, after first hearing from the victim or offended party and the Prosecutor at the hearing [on the matter].

Article 189. Lifting the attachment order.

The precautionary attachment of goods will be lifted in the following cases:

I. If the person against whom the attachment was ordered guarantees or makes payment compensating the damage or loss;

II. If the order was issued before the charge was filed and the Prosecutor does not file [the charge] or request an arrest warrant or request a date for a hearing to file the charge within the period provided for by this Code;

III. If [the court] decides that the request by the person against whom it was lodged or a third party to cancel the attachment of property is well-founded; and

IV. If the court issues a judgment of acquittal, orders that the case be dismissed or absolves the person against whom he/she ordered [the attachment] from compensation for damages.

Article 190. Cancellation or return of a bond.

In a case in which the person against whom the court [originally] ordered the attachment of property has guaranteed payment of compensation, the bond will be returned if the court issues a judgment of acquittal or an order of dismissal in the criminal case or finds in that person's favor on the issue of compensation for damages.

Article 191. Opposition [to the attachment of property].

The court will not hear any appeals or objections in execution of a precautionary writ of attachment.

Article 192. Jurisdiction.

The Preliminary Judge who has the criminal case will have jurisdiction to order a precautionary attachment of property. In urgent cases, the Preliminary

Judge in the place [where the property is located] may order it. In this latter case, once the order is executed, [the judge] will send the matter to the Preliminary Judge with jurisdiction.

Article 193. Conversion to a final seizure order.

The precautionary attachment may be converted to a permanent seizure order when the final judgment requires the person against whom the court issued the first executory order to compensate for the damage.

Article 194. Payment or bond made prior to the seizure.

[The court] will not execute a precautionary attachment of property if, in the act of its doing so, the person against whom [the seizure] was ordered hands over the amount claimed in compensation for damages or a bond in the total amount.

Article 195. Imposition.

The precautionary attachment of property will be governed in accord with the general rules on distraint and seizure, as provided in the current Code of Civil Procedure of the State [of Chihuahua].

TITLE SEVEN
ALTERNATIVE MEANS TO END CRIMINAL PROCEEDING

CHAPTER I
REPARATION AGREEMENTS

Article 196. Definition.

A reparation agreement is an agreement between the victim or offended party and the defendant that provides a solution to the conflict by whatever suitable means allows for the termination of [criminal] proceedings..

Article 197. Origin.

Reparation agreements may be entered [in those cases involving] unintentional crimes for which one may be held criminally responsible (*delitos culposos*)[21]; those [cases] in which the [defendant] is forgiven by the victim or

[21] *Delitos culposos* or "wrongful crimes" are a significant category of crime in Mexico and other Hispanic countries in which criminal liability is imposed even though the conduct was not intentional. The comparable crimes under United States law would be those involving criminal negligence, such as involuntary manslaughter, "wrongful death," and many environmental crimes. Mexican *delitos culposos* are somewhat broader, also punishing conduct which has the prohibited effect, even if it is

offended party; those [cases] that involve family matters that have been committed without violence against any person; those [cases] that permit the substitution of sanctions or conditional discharge (*condena condicional)*;[22] and those [cases] for which the median sentence does not exceed five years' incarceration and which lack social significance.

Crimes that are excluded [from this provision] include involuntary homicide (*homocidio culposo*), as provided under the terms referred to in Article 62 of the Criminal Code [of the State of Chihuahua]; crimes against sexual freedom and security and [those] involving family violence; crimes committed by public servants in the course of their duties or because of their position; and those committed by members of a conspiracy as defined by the State Criminal Code. Reparation agreements also will not be permitted in cases in which the defendant has previously entered agreements for the same types of crimes.

If the crime impacts on difuse or collective interests, the Prosecutor will represent [those interests] for purposes of conciliation when none of the persons authorized by this Code has appeared as a victim.

Article 198. Timing.

Reparation agreements may be entered into until the time when the order setting the opening of the oral trial is issued. At the request of any of the parties, the Judge may suspend the criminal proceedings for thirty days in order that the parties may [enter into] negotiation, mediation or conciliation. If the discussions are broken off, any of the parties may request that the criminal proceeding be reinstated.

Article 199. Legal proceedings.

From his/her earliest involvement in the case, the Prosecutor or, as applicable, the Preliminary Judge, will convene the interested parties for whom reparation agreements may be possible and will explain to them effects of and mechanisms available for mediation or conciliation.

The information developed during these proceedings may not be used to the prejudice of the parties to the criminal proceeding.

The court will not approve reparation agreements when it has well-founded reasons to believe that one of the participants is not in an equal position to negotiate or has been coerced or threatened.

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done with neither negligence nor intent, although the degree of negligence or contribution to the result will affect the penalty.

[22] *Condena condicional*, literally translated, is "conditional conviction" but is identical to the United States concept of a conditional discharge, in which a conviction is vacated if the defendant meets the conditions imposed by the court over a specified period.

Article 200. Effects.

The judge will approve the agreements, which will be recorded in a reliable form.

The legal proceedings and the statute of limitations for the criminal case will be stayed during the period fixed for fulfilling the obligations agreed to.

If, without just cause, the defendant fails to fulfill the obligations agreed to within the period fixed by the parties, or, when there was no set time limit, within one year from the day following ratification of the agreement, the proceeding will continue as if no agreement had been reached.

Fulfillment of the agreement will prevent a criminal prosecution [for the same case] or will terminate that which had been undertaken.

CHAPTER II
SUSPENSION OF THE [PRE-TRIAL] EVIDENTIARY PROCEEDING [PRE-TRIAL DIVERSION][23]

Article 201. Origin.

In cases where an order has issued definitively finding probable cause to hold the defendant for prosecution for a crime for which the maximum penalty does not exceed five years' incarceration, if the defendant has not previously been convicted of willful crimes, he/she does not have nor has he/she had another crimiinal proceeding suspended and the Prosecutor and victim or offended party have no legal objection, the court may suspend the [pretrial] evidentiary proceeding at the request of the defendant, or of the Prosecutor with [the defendant's] agreement.

Article 202. Timing

The suspension of the pre-trial evidentiary proceedings [pre-trial diversion] may be requested at any time up until the agreement on the opening of trial; [such suspension] will not prevent the bringing of a civil case before the appropriate courts. If a request [for suspension] is made even though a charge has not yet been filed, the facts will be set out clearly in the order finding probable cause to hold the defendant for prosecution.

Article 203. Reparation plan.

In the hearing at which the request for suspension of the pre-trial evidentiary proceeding is to be decided, the defendant shall set forth in his/her case a plan for compensation for the damage caused by the crime and a detailed statement of the

[23] As shown in the following Articles, suspension of the *processo a prueba* is similar to a suspension of the prosecution in favor of a pretrial diversion.

conditions that the defendant would agree to fulfill in conformity with Article 205. The plan may consist of an indemnization equal to the cost of reparation for the damage or a token reparation payment, together with the [proposed] time period for completing it.

Article 204. Decision

The Preliminary Judge will rule on the request for suspension of the pre-trial evidentiary proceeding at a hearing. The victim or the offended party will be summoned [to the hearing], but their failure to appear will not prevent the Judge from ruling on the request. If the request for a suspension of the evidentiary proceeding is made before the order finding probable cause to hold the defendant for prosecution, the Judge will make a decision on the request immediately after issuing the order finding probable cause.

The decision will state the conditions under which [the court] is suspending the proceeding or rejecting the request and approve or modify the reparation plan proposed by the defendant in accord with reasonable criteria. The defendant's lack of resources shall not be basis for rejecting the possibility of a suspension of the evidentiary proceeding.

Article 205. Conditions that must be fulfilled during the period of pre-trial diversion.

The Preliminary Judge will fix the period for suspension of pre-trial diversion, which will not be less than one year nor more than three, and will decide whether to impose one or more conditions that [the defendant] must fulfill, which may include the following:

I. That he/she reside in a specific location;
II. That he/she frequent or stop frequenting specific places or with specific people;
III. That he/she abstain form consuming drugs or narcotics or from abusing alcoholic drinks;
IV. That he/she participate in special programs for the prevention and treatment of addiction;
V. That he/she learn a profession or take training courses at the location or institution that the Judge decides;
VI. That he/she provide social service to the State or to institutions of public benefit;
VII. That he/she submit himself for medical or psychologoical treatment, preferably at a public institution;
VIII. That he/she hold a job or employmemt or, if he/she has no means to support himself, that he/she acquire a trade, art, industry or profession, within the period the judge decides;

IX. That he/she be subject to such supervision as the judge determines
X. That he/she not possess or carry arms;
XI. That he/she not drive vehicles;
XII. That he/she abstain from traveling abroad; and
XIII. That he/she fulfill all obligations to pay alimony.

When it becomes plainly apparent [to the court] that the defendant is unable to comply with one of the prior conditions for reasons of health, religious beliefs or some other particularly relevant reason, the Judge, basing [the decision] on law and fact, may replace [such conditions] with one or more analogous [conditions] that are reasonable.

To determine the conditions [to be imposed], the Judge may order that the defendant be summoned for a preliminary evaluation. The Prosecutor, the victim or the offended party may propose conditions to the judge that they believe should be imposed on the defendant.

The Judge will ask the defendant whether he/she will agree to comply with the conditions imposed and will warn him/her of the consequences of his/her failure to observe them.

Article 206. Preservation of the evidence.

With regard to matters suspended on the basis of the rulings made under this Section, the Prosecutor will take steps necessary to prevent the loss, destruction or loss of efficacy of the evidence that has been obtained and that requested by the parties.

Article 207. Revocation of the suspension.

If, without just cause, the defendant significantly deviates from the conditions imposed, does not fulfill the reparation agreement or is later convicted of an intentional or wrongful crime, and the suspended proceeding relates to a crime of the same sort, the Judge, at the request from the Prosecutor or the victim or the offended party, will convene the parties for a hearing at which they will argue the issue of revocation. The Judge, in a decision grounded in law and fact, will decide immediately whether the criminal prosecution should be resumed. Rather than revocation, the Judge may extend the suspension of the evidentiary proceeding for a period of two more years. This extension may only be done once.

If the victim or offended party has received payments during the suspension of an evidentiary hearing that is later revoked, they will set aside an amount for repayment of damages and loss that could become applicable.

Article 208. Provisional stay of the effects of pre-trial diversion.

The obligation to comply with the conditions set and the period of suspension will be stayed during any period when the defendant is in custody for

another proceeding. But it will begin again once he/she is put at liberty.

If the defendant is summoned to another proceeding and remains at liberty, his/her obligation to fufill the conditions and the period within which he/she must do so will continue to run, but [the court] may not dismiss the criminal case until the decision absolving him/her of responsibility [in the later case] is final.

The revocation of a suspension of evidentiary proceedings will not prevent the entry of a judgment of acquittal nor the imposition of measures alternative to depriving [the defendant] of his/her liberty, when that would be appropriate.

Article 209. Effects of suspension of the evidentiary proceeding.

When the fixed period [for the suspension] has passed without the pre-trial diversion being revoked, the criminal action will be terminated, requiring the court to order dismissal of the case on his/her own authority or at the request of a party.

During the period of pre-trial dieversion discussed in the prior articles, the statute of limitations for the criminal case will remain stayed.

TITLE EIGHT
ORDINARY PROCEEDINGS

CHAPTER I
INVESTIGATION STAGE

SECTION 1
GENERAL RULES

Article 210. Objective.

The purpose of the investigative stage is to clarify the material facts in the accusation (*denuncia*) or complaint (*querella*)[24] and, by obtaining information and collecting evidence that provide a legal basis for the filing of the formal accusation

[24] The single word "complaint" is used in the United States to describe a complaint made by a complaining victim or one by an official. In Mexico, the word "*querella*" is used when prosecution of the crime, by law, requires that there be a complaining witness (usually the victim), and the word "*denuncia*" is used to describe a complaint that may be communicated by any person with knowledge of a crime (often a law enforcement authority), to the Prosecutor. In order not to lose the distinctions maintained in this Code, the translation uses the word "complaint" as the translation for "*querella*" and "accusation" as the translation for "*denuncia*." However, the term "*Acusación*" is later used to describe the formal charging document, similar to an indictment or criminal information,which is presented at a hearing at the conclusion of the investigative stage.

and guarantee the defendant's right to a defense, to determine whether there is a lawful basis to hold a criminal trial against one or more persons.

The Prosecutor will be in charge and act with the assistance of the [investigative] police and the State public security forces.

SECTION 2
MEANS OF INITIATING THE PROCEEDING.

Article 211. Means of initiating the proceeding.

A criminal proceeding shall be initiated with an accusation or complaint.

Article 212. Accusation.

Any person who has knowledge of the commission of an act that has the characteristics of a crime shall make it known to the Prosecutor.

Article 213. Form and content of the accusation.

The accusation may be prepared in whatever form and must contain the name of the accuser, his/her place of residence, an account of the circumstances of the crime, and, if possible, an indication of who committed it and those persons who were present or know about it.

If the life or the security of the accuser or those close to him/her would be in danger, their identity will be adequately protected.

If the accusation is provided verbally, a record of it will be prepared that will be signed by the accuser and by the public servant who receives it. If the accusation is written, the accuser should sign it. In either case, if the accuser is unable to sign, it will be stamped with his/her index finger or signed by a third party at his/her request.

To the extent pertinent, the complaint should comply with the same requirements as an accusation.

Article 214. Mandatory accusation.

Those who are required to make an accusation are:

I. Members of the police force with respect to all crimes that they observe or which are brought to their attention;

II. Public servants with respect to crimes of which they are aware as a result of their position or because of their duties and with respect to tthose that are committed by their subordinates;

III. Directors of bus and other public transportation and cargo stations, and drivers of buses and other public transportation, regarding crimes that are committed during the trip or in the area of the station/depot;

IV. Directors of hospitals, private clinics, health centers and, in general,

professionals in medicine, dentistry, chemistry, pharmacy and other fields related related to preservation and renewal of health, and those who have positions that are auxiliary to the former, whenever they see indications on a person or on a corpse that make it likely that a crime has been committed;

V. Directors, inspectors and professors at educational and social welfare institutions with respect to crimes that affect the students or users of such services or when the crimes have occurred in the institution.

An accusation submitted by one of those who are required to do so by this Article will exempt the rest [from the obligation].

Article 215. Failure to fulfill the obligation to make an accusation.

Those persons described in the prior Article who fail to make an accusation will be subject to the sanctions provided by law

Article 216. Authority to not make an accusation.

Making an accusation will not be mandatory if the persons mentioned in Article 214 risk prosecution of themselves, or their spouse, or their relative by blood to the fourth degree or marriage to the second degree, or a person with whom they have been living permanently during at least the prior two years, or if the person gained his/her knowledge of the crimes through a professional confidential relationship (*bajo secreto professional*).

Article 217. Period within which to make the accusation.

Those persons who are required to file an accusation shall do so within twenty-four hours following the time when they became aware of the criminal act unless the circumstances of the case provide a basis to fear that there may be irreparable harm to a judicial interest, danger of an escape from justice or destruction of evidence, in which case the accusation shall be made immediately.

Article 218. Criminal Complaint.

A complaint is an expression of choice by the victim or the person offended by the crime, or one of his/her representatives, by which he/she expressly or tacitly makes clear his/her wish that a criminal charge be filed.

Article 219. Crimes prosecuted by complaint.

A complaint is required and a charge cannot be pursued against the responsible parties when the crime involves failure to fulfill obligations to support the family, injuries that are not life threatening, can be cured within less than two weeks and leave no medical-legal consequences, danger of infection between spouses or couples living together, coercion or threats, criminal trespass, divulging of secrets, rape, sexual abuse (except as provided in Article 246 of the Criminal

Code), sexual harassment, unlawful artificial insemination, abduction, defamation, calumny, abuse of trust, fraud, losses/damages, unlawful occupancy of property, extortion, fraudulent administration and falsification of documents, as provided in section XI of Article 168 of the Criminal Code.

A complaint is also required for the crimes of robbery, cattle theft and concealment of the receipt of stolen cattle, if committed by a parent, grandparent, descendant, spouse, relative by blood or marriage to the second degree, persons with whom the victim is cohabiting, or an adoptive parent or adopted child.

A complaint will also be required for prosecution of third parties who have participated in the crime with the persons who are listed above.

Article 220. Emergency measures.

Before a complaint is drawn up, [the police] may take emergency measures to prevent continuation of the crime or take those actions essential to protecting the evidence necessary for the prosecution.

Article 221. Formal errors.

Formal errors in the complaint may be corrected when the victim or offended party appears to ratify [the complaint], before the Preliminary Judge rules on the request for an arrest warrant or issues the order finding probable cause to hold the defendant for prosecution.

Article 222. Incompetent [victims].

With regard to those [victims] who are not competent, the complaint may be presented by [the victim's] legal representatives or by parents or siblings. When there is a dispute between a minor victim and his/her legal representative on whether a complaint should be presented, the Office of the Prosecutor for the Defense of Minors will decide.

This Office shall prepare a complaint as representatives of minors or incompetents when they do not have legal representatives and in all cases of crimes committed by such legal representatives.

SECTION 3

CRIMINAL PROSECUTION

Article 223.Duty to prosecute.

When the Prosecutor has knowledge of the existence of an act that appears to constitute a crime, he/she will pursue the criminal prosecution without suspending, interrupting or terminating it, except as prescribed by law.

In those cases in which an alternative resolution is possible, the Prosecutor shall direct the matter to the Center for Alternative Justice.

The accuser, complainant or the defendant may lodge an objection before the Prosecutor's superiors as designated in the Organic Law [for administration of that agency] for failure to pursue the investigation, or when [the prosecutor] fails to make a decision regarding the complaint even though the predicates necessary [for a decision] are present.

Article 224. Temporary archiving [of the complaint}.

Up until the time the charge is presented, the Prosecutor may temporarily archive a case for which the evidence necessary to develop the investigation to clarify the facts has not been found.

In cases involving crimes against sexual freedom and security and family violence, [the Prosecutor] should be sure that the applicable protocols and special provisions issued by the Prosecutor General are followed.

The victim or offended party may request that the Prosecutor reopen the proceeding for further investigation and, if the request is denied, may make a demand before the Office of the State Prosecutor General, in accord with the Organic Law.

Irrespective of the preceding provision, so long as the statute of limitations for the crime has not expired, the Prosecutor, on his/her own, may order the reopening of the proceedings at any time, if new evidence supporting conviction appears that would justify it.

Article 225. Power to decline to investigate.

So long as the Judge has not yet intervened in the case, the Prosecutor may decline the investigation when it is apparent that the facts contained in the accusation or complaint would not constitute a crime or when the background information and data assembled permit him/her to establish, without doubt, that the statute of limitations for the criminal case against the defendant has expired.

Article 226. Non-prosecution [*Nolle prosequi*].

Before the charge is presented, if the Prosecutor has sufficient background information to allow him/her to conclude that the specific case satisfies one of the predicates described in Article 288 of this Code, he/she may issue a decision of non-prosecution (*nolle prosequi*), grounded in law and fact.

Articule 227. Judicial oversight.

The decisions of the Prosecutor to temporarily archive, decline to investigate or decline to prosecute a criminal case may be contested by the victim or the offended party before the Preliminary Judge. In such a case, the Judge will

convene a hearing of victim or offended party, the Prosecutor, and, if appropriate, the defendant and his/her defense attorney, in order to make a definitive decision. If the victim, the offended party or their representatives, although summoned, do not appear at the hearing, the Preliminary Judge will declare that the complaint is without merit and will affirm the decision to temporarily archive, decline to investigate or decline to prosecute the criminal case.

The judge may vacate the decision of the Prosecutor and order him/her to reopen the investigation or to continue the criminal prosecution only when he/she concludes that the predicates necessary to support one of the [alternative dispositions] described in the prior paragraph are not present.

SECTION 4
INVESTIGATIVE PROCEEDINGS

Article 228. Supervision of the investigation.

The representatives of the Prosecutor's Offce will promote and direct the investigation and will carry out themselves or entrust to the police the investigative steps that they believe will clarify the facts.

From the time Prosecutor has knowledge indicating that a crime has been committed, he/she will immediately take all relevant and useful steps to clarify and verify the facts, the circumstances relevant to the applicable criminal law, the authors and participants, as well as the circumstances that would establish their [criminal] responsibility. At the same time, they should prevent the crime from causing further harm.

Article 229. Obligation to supply information.

Every person or public servant is obliged to promptly provide information required by the Prosecutor exercising his/her responsibility to investigate a specific criminal act. They may not be excused from providing [such information], except under the circumstances expressly provided by law. If a person is summoned for an interview by the Prosecutor or investigative police, he/she has an obligation to appear.

Article 230. Confidentiality of investigative proceedings.

The investigative actions taken by the Prosecutor and by the police will be secret from third parties to the proceedings. The defendant and other participants may examine the records and documents of the investigation and obtain copies of them, except as otherwise provided by law.

The prosecutor may arrange to keep certain actions, records and

documents secret from the defendant or the rest of the participants when he/she determines that is necessary, for the sake of the investigation. In such case, he/she should identify the respective pieces of the record or actions in a manner that does not jeopardize the confidentiality, and set a period of not more than ten days for that secrecy to be preserved. When the prosecutor needs to extend the period, he/she should establish the basis for [the need] before the Judge with jurisdiction of the case. The information gathered may not be used as evidence at trial without the defendant having had an opportunity to adequately exercise his/her right of defense.

The defendant or another participant [in the case] may request that the Judge end the period of secrecy or limit its duration with respect to the pieces [of evidence] or activities that involve him/her or affect other parties.

Without prejudice to the provisions of the previous paragraph, the defendant and/or the defense attorney may not be prevented from having access to the defendant's statement or any other activities in which he/she has participated or has the right to participate, to any proceedings in which the judge participates and to experts' reports.

Secrecy regarding the information on activities, records and documents will not continue once the formal accusation against [the defendant] has been presented, except as provided by this Code.

Article 231. Outside communications.

The Prosecutor, the participants in the investigation and other persons who, for whatever reason, have knowledge of the investigative activities, may not furnish any information that might threaten the secrecy or confidentiality of [the investigation].

Article 232. Suggestions for further investigative steps.

During the investigation, the defendant as well as the rest of the participants in the proceeding may request that the Prosecutor carry out such [investigative] steps as they consider useful and relevant for clarifying the facts. The Prosecutor will order that those requests be carried out if he/she believes they would be rmaterial.

During the investigation the defendant may request that the judge issue those instructions necessary in order that his/her experts may have access to examine objects, documents and locations referred to in the [prosecution's] expert report.

Article 233. Summoning of the defendant.

In those instances when the presence of the defendant is necessary in order

to carry out an investigative procedure, the Prosecutor or the Judge, as applicable, will summon the defendant to appear, together with his/her defense attorney, indicating precisely the action required of him, the purpose of the activity, and the name of the public servant in charge of carrying out the procedure. [The summons] will state that failure to appear without good cause may result in [the defendant's] being brought in by the police.

If there is an impediment to his/her attending, the summoned [defendant] should communicate that fact to the public servant who summoned him/her and immediately explain the reason for his/her failure to appear.

Failure to appear without good cause will result in the execution of the warning [that the defendant will be brought in by the police], if the participating Judge considers that necessary.

Article 234. Consolidation of investigations.

When two or more representatives of the Prosecutor's Office are investigating the same facts and for this reason the rights of the defense of one or more defendants are affected, they may request that the Prosecutors' supervisors decide which one of them will be in charge of the case.

Article 235. Judicial Actions.

The Preliminary Judge with jurisdiction of this stage of the case will be in charge of authorizing that evidence to be taken in advance, ruling on objections, ruling on precautionary measures and other requests appropriate to the investigative stage, granting authorizations and supervising the case to assure compliance with legal principles and procedural and constitutional guarantees.

Article 236. [Probative value] of the proceedings.

Actions taken during the investigative stage will have no probative value with respect to the final judgment except when such [activities] are carried out in accord with the rules set forth in this Code relating to evidence taken in advance, as well as provisions authorized by this Code for incorporating readings or reproductions into the oral trial.

[These materials] may be presented as evidence to support any decision prior to judgment, or as a basis for judgment when there is a plea agreement proceeding (*procedimiento abreviado*) [25]

[25] A *procedimiento abreviado*, literally "shortened proceeding," is the hearing for consideration of a plea agreement.

SECTION 5
INVESTIGATIVE MEASURES

Article 237. Search at private entities.

When it is considered necessary, and with prior judicial authorization, the search of private entities, such as legal residences, offices, or commercial establishments, will be personally performed by the Prosecutor with the assistance of the police.

Article 238. Search of other locations.

A search of public offices, public places, military establishments, churches or religious centers, meeting places or open recreational establishments and are not intended to be inhabited, may be done without a judicial order with the voluntary and express consent of the persons who are in charge of those locations.

If seeking consent might damage the outcome [of the search], consent will be required from the supervisor of the institution or the person with the power to exclude [the investigative police]. If consent is not granted or it is not possible to obtain it, a search warrant will be required.

Whoever has given consent will be invited to be present during the search.

Article 239. Content of the judicial order authorizing the search warrant.

The order granting a search warrant shall contain:

I. The name and position of the Judge who authorizes the search and identification of the proceeding for which it is ordered;

II. The specifc location or locations that are to be searched and what is expected to be found as a result; and

III. The reason for the search warrant, setting forth the basis for believing it is possible that they will find the person or persons to be arrested or the objects they are looking for at the place [to be searched].

Article 240. Procedural requirements for the search.

A copy of the order authorizing the search will be provided to the person living at, possessing or in custody of the place where the search occurs or, if that person is absent, to the person in charge or, in his/her absence, to any other legally adult person whom they find at the location. When [the representative of the Prosecutor or the police] does not encounter anyone, he/she will make a record of that fact and use the police to make entry. Upon completion [of the search], he/she will make sure that the premises are secured and, if that is not possible and before he/she succeeds in doing so, will immediately ensure that other persons do

not have access.

In carrying out the search, a record will be made of the results, with details of the search and all circumstances that are helpful to the investigation.

The search will be carried out in a manner that affects the privacy of [the affected] persons as little as possible.

The record [of the search] should include the name and signature of the prosecutor and of the rest of those present, as well as of the witnesses proposed by the occupant of the premises searched and, in the absence [of the occupant] or his/her refusal [to provide his/her name or signature], then [the name and signature] of the the authority who executed the search. No other form of record may be substituted for this record.

Article 241. Surveillance measures.

Before the Judge issues the search warrant, the Prosecutor may arrange for such surveillance measures as he/she believes advisable to prevent the flight of the defendant or the removal of documents or objects that are the object of the [search warrant].

Article 242. Enforcement powers.

In order to execute a search warrant, carry out a search and make a record, the warrant may order that during the search no one who is present nor anyone who suddenly appears may leave. Whoever refuses to obey may be compelled [to remain] by the police.

Article 243. Objects and documents that are not related to the crime under investigation.

If, during the search, [those doing the search] find objects or documents in plain view that appear to be evidence of a crime distinct from the one being investigated for which the search warrant was issued, they may proceed to describe them. A record of these objects and documents will be made by the Prosecutor, who will report this circumstance to the Judge.

Article 244. Other searches.

Entry may be made into a closed place without a search warrant when:

I. Because of fire, flooding or another similar circumstance, the physical well-being or safety of the inhabitants of the property is threatened;

II. Someone has made a complaint that strangers have been seen as they came into the location, with indications that they are intending to commit a crime;

III. Voices coming from a closed or inhabited location or from its related buildings are crying out that a crime is being committed there or are asking

for help.

The reasons for a decision to search without a search warrant will be detailed in the record made of the event.

Article 245. Search of a person.

The police may carry out a search of a person when there is sufficient reason to believe that someone is hiding articles related to the investigation in his /her clothing or on his/her person.

Before proceeding with the search, [the person performing the search] shall inform the subject in writing concerning the reason for the search and the object sought, and invite him/her to produce it.

[Intimate] searches that affect the sense of modesty of a person preferably should be carried out in an enclosure that provides adequate privacy and should be done by someone of the same sex as the person [being searched].

In no case will disrobing of the person be permitted in these searches. A record will be made of what has occurred.

Article 246. Body searches.

In those cases in which there is a serious and legally-grounded suspicion or when there is an absolute necessity, the Prosecutor who is in charge of the investigation or the supervising Judge, in writing, may order a body search of a person and, in such case, will take care to respect the sense of modesty of the person searched.

The search shall be carried out in an enclosed area that adequately protects the privacy of the individual and preferably will be done by persons of the same sex.

If it is necessary, the search may be carried out with the assistance of experts.

Prior to the examination, the subject of the examination will be advised of the right to have a person in whom the subject has confidence present at the examination.[26] In the case of minors, the presence of a confidential counselor will be an indispensable condition for conducting the search.

A record will be made of what occurs during the search.

Article 247. Search of vehicles..

The police may inventory [the contents of] a vehicle, so long as there is sufficient reason to believe that there are objects related to the crime in it. To the extent that it is applicable, the [police] will follow the same procedures and fufill the same requirements as set forth for the search of persons.

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[26] "*Una persona de confianza*," as discussed at footnote 3.

Article 248. Multiple searches

Within the framework of their investigation of a crime, when the police perform searches of persons or vehicles, whether collectively or massively, they should execute them under the supervision of the Prosecutor in order that he/she may watch over the procedures to ensure that they are lawful. If it is necessary to search particular identified persons or vehicles, the search will be governed by the preceding Articles.

Article 249. Seizures.

The Judge, Prosecutor and the police should put the articles that have been recovered in order and preserve those articles that may be relevant to the crime, the articles that have been confiscated and those that could be used as evidence. When necessary, they will order that the articles be secured.

Whoever has custody of objects or documents, as noted, will be obliged to produce and hand them over when required to do so. The Judge or Prosecutor may impose authorized enforcement measures against a witness who refuses to testify; but an order to appear may not be directed against someone who may or must decline to testify as a witness.

In urgent cases, the prosecutor may delegate his/her power to the police, who will act uder his/her strict supervision.

Article 250. Procedures for seizures.

Those regulations established for searches will be applied to seizures. Articles seized will be inventoried and maintained in custody [of the authorities].

Copies or reproductions of the property seized may be provided when the originals might disappear, be altered, be difficult to maintain in custody or when it would be helpful to the investigation.

Article 251. Things not subject to seizure.

Conversations between the defendant and his/her defense attorney, as well as with other persons who may decline to testify because of their obligation to protect professional secrets, will not be subject to seizure.

This exception will not apply when the people referred to in this Article, other than the defendant, are being investigated at the same time as authors or participants in the crime or there is evidence that they are involved in it.

Also exempt [from this exception] are articles confiscated because they are fruits of the crime or served as instrumentalities for its commission.

If it is evident at any time during the proceeding that seized materials fall within the exceptions provided for in [paragraph one of] this Article, they will be inadmissible as evidence in that proceeding.

Article 252. Return of seized property.

Immediately following the procedures for which [seized property] was obtained, authorities will be required to return that property not subject to confiscation or attachment to the person who is legally entititled to it.

[The court may order] that the property be placed in a judicial depository, the depository remaining subject to such obligations as set by the court.

If there is a controversy regarding the holding, possession or control of an object or document, [namely], whether to place it in a depository or to return it, the Judge will resolve the matter of who has the most right to have custody, without affecting the right of other interested parties to bring a related civil action. The resulting decision may be appealed.

At the conclusion of the hearing, if it has not been possible to determine to whom seized materials belong, they may be deposited with a public welfare establishment or institution, which may only use them to fulfill the services that they offer to the public.

When considered advisable, a photographic or other adequate record will be made of those items compensated for or returned.

Article 253. Closing down establishments.

Whenever it is necessary to close down an establishment in order to investigate a crime, the Prosecutor will proceed to do so.

Article 254. Control.

Interested persons may object before the Judge concerning actions undertaken by the police or Prosecutor based on the powers referred to in this section. The Judge will make the final decision with regard to this issue.

Article 255. Impoundment of data bases.

When data processing equipment or information stored in another form is seized, the matter will be handled in the same manner as [that provided for processing] documents and will be governed by the same rules,

Examination of objects and documents will be the responsibility of the reprentatives of the Prosecutor who requested it. Objects or information that are not helpful to the investigation or fall within the restrictions on seizure will be returned immediately and may not be used for the investigation.

Article 256. Interception and seizure of communications and correspondence.

When it becomes necessary to intercept private communications during the course of the investigation, the director (*titular*) of Prosecutor's Office will request

that the Judge authorize it, observing the requirements of the applicable federal law, as applicable.

Communications between the defendant and his/her defense attorney may not be intercepted.

Article 257. Removal and identification of cadavers.

In cases of violent death or when it is suspected that a person has died as the result of a crime, there should be a search of the crime scene, and arrangements should be made for removal of the body and appropriate expert examination to establish the cause and manner of death.

When the investigation does not result in evidence providing a basis to believe that a crime has been committed, the Prosecutor may authorize that the autopsy be dispensed with.

If the identity of the cadaver is unknown, identification will be made using relevant expert evidence. With prior authorization of the Prosecutor, as soon as the autopsy has been completed or if this step has been dispensed with, the cadaver may be turned over to relatives or to those who demonstrate sufficient title or reason [to receive it].

Article 258. Exhumation of corpses.

In the cases noted in the previous Article, when the Prosecutor believes that it is indispensable for the investigation of a crime and public health provisions permit it, the Prosecutor may order the exhumation of the body.

In all cases, once the examinaton or autopsy is completed, the decedent will be buried immediately.

Article 259. Experts' Reports.

During the investigation, the Prosecutor may arrange for preparation of such expert reports as are necessary for the investigation of the crime.

A written report does not excuse the expert from the requirement that he/she appear to testify at the oral trial.

Article 260. Activity complementary to the expert's report.

If necessary in order to prepare the expert's report, the production or seizing of objects or documents and appearance by the Prosecutor or other persons may be required. Subject to the restrictions established by this Code, the defendant and other persons may be required to provide handwriting exemplars, record their voices or carry out analogous procedures. When an activity can only be done voluntarily by a person and he/she does not want to do it, a record will be made of his/her refusal and the court, on its own authority, will order those measures necessary to compensate for this lack of cooperation.

To the extent possible, whatever is examined [by an expert] will be preserved, in order that the expert procedure may be replicated.

Article 261. Reenactment of events.

Reenactment of an event may be carried out in order to prove that it occurred, or could have occurred in a particular manner.

Neither the defendant nor the victim nor the offended party may be compelled to participate in the [reenactment of events], which should be carried out with the greatest secrecy possible.

Article 262. Procedures for identification of persons.

For eyewitness identification of persons, which should be carried out with the greatest confidentiality possible, the following procedures shall be observed:

Before the eyewitness identification, the person who is to make [the identification] will be questioned in order that he/she may describe the person in question and state whether he/she knows him/her or whether he/she has seen him/her in the past or has seen pictures of him/her.

In addition, he/she will say whether he/she has seen the person again since the crime, where and for what reason.

With the exception of the defendant, the witness will be instructed regarding his/her obligations and the consequences of his failure to fulfill them, and he/she will take an oath to tell the truth.

Thereafter, the person who is being summoned [to be a part of] the identification proceeding will be invited to choose a place among other persons of similar appearance and clothing. The person being asked to make the identification then will be asked to say whether he/she finds the person described among the persons present. If the answer is affirmative, he/she will point out that person clearly. When he/she has identified the person, he/she will describe the differences and similarities observed between the appearance of the person he/she has pointed out and [the person's appearance] at the time he/she described by his/her earlier statement.

A record will be made of the identification proceeding, specifying relevant facts including the name and residence of those participants who made up the lineup.

The identification will proceed even without the consent of the defendant, but always in the presence of his/her defense attorney. The person who is summoned to make an identification should be placed in a location where he/she cannot be seen by the participants in the lineup. Necessary precautions will be taken to ensure that the defendant does not alter or conceal his/her physical appearance.

Article 263. Multiple identifications of the same person..

When several persons have to [participate] in the identification of a single person, each identification procedure will be conducted separately, without their communicating among themselves. If one person has to make an indentification of several people, the identifiction of all may be done in a single proceeding, so long as that does not prejudice the investigation or the defense.

Article 264. Identification from a photograph.

When it is necessary to identify a person who is not present and cannot be made available, his/her photograph, together with other similar photographs of other persons, may be shown to the person who needs to make the identification, observing the preceding rules to the extent possible.

Article 265. Identification of an object.

Before making an identification of an object, the person who is to make the identification should describe it.

Article 266. Other identification procedures.

To the extent possible, when [a witness] is asked to make an identicication of voices or sounds or to make another identification involving the senses, the procedures above for the identification of persons will be followed.

This proceeding will be put on the record, and the authority [responsible for the proceedure] may arrange that the proceeding be documented by photographs, video or other appropriate means.

SECTION 6

EVIDENCE GIVEN IN ADVANCE OF TRIAL[27]

Article 267. Evidence given in advance of trial.

After a witness finishes making his/her statement before the Prosecutor, the prosecutor will inform the witness of his/her obligation to appear and testify during the oral trial, as well as to communicate any change of residence or address up [to the time of trial].

If, having been warned as described in the prior paragraph, the witness states that it will be impossible for him/her to be present at the oral trial because he/she must be far away [at the time of trial], is living abroad or there is a reason that he/she fears for his/her life, or because his/her physical or mental state prevents him/her from testifying, or there is some other similar obstacle, the parties

[27] *Anticipo de prueba.*

may ask the [Preliminary] Judge, or, as applicable, the Judge of the Trial Court to receive his/her testimony in advance. The request for relief to allow a witness to provide evidence prior to trial may be made [at any time] from the time when the formal accusation is submitted until just before the oral trial hearing [for which the witness] is called.

Article 268. Summons to give evidence in advance of trial.

In those cases provided for in the previous Article, the Judge shall summon all those parties that have the right to attend the oral trial, who will have all the same powers they would have at such trial. In the event there is not yet a charged defendant, a public defender will be appointed to participate in the hearing. Whenever there is extreme urgency, the parties may orally request the intervention of the Judge, who will conduct the proceeding without prior summons, designating a public defender, if appropriate. A record will be made of the reasons for the urgency.

The hearing in advance of trial at which the witness gives his/her testimony shall be video-recorded in its entirety, and when done, the compact disc with the recording will be delivered to the Prosecutor, with copies for those who request them, so long as such person is legally entitled to have it.

If the impediment that was the basis for [a witness'] providing evidence in advance of trial does not exist on the date of the oral trial, the person must attend the trial to give his/her testimony.

Article 269 Evidence prior to trial obtained outside the State of Chihuahua or abroad.

If the witness is outside the territory of the State [of Chihuahua] or abroad, the Prosecutor or the defendant may ask the Judge with jurisdiction of the case to receive his/her testimony given in advance of trial as evidence.

For cases in which such advance testimony has to be obtained abroad, the provisions of federal law and International Treaties and Conventions signed by Mexico will be observed.

If the witness who is the source of the evidence is located in any other State of the Republic of Mexico, the request will be sent in writing to the appropriate court. The request will indicate the specific manner in which evidence should be obtained from the witness and provide a transcript of the rules from the State Code of Criminal Procedure that they should follow. If this proceeding is authorized abroad or in another State of the Republic, and if it does not occur for reasons attributable to the party offering it, [the testimony] will be considered waived.

Article 270. Notification to the defense attorney of an expert's report based on an examination that cannot be replicated.

When a report of an expert's opinion relies on examination of objects that will be consumed during the analysis, the expert may only use half the substance for the first analysis, unless the amount is so small that experts cannot render an opinion without consuming all of it. In such a case, or in any similar case preventing a later independent expert's examination, the Prosecutor is required to notify the defendant's attorney, if he/she has been chosen, or if not, the public defender, to determine if he/she wishes to designate an expert who, together with the one designated by the Prosecutor, may carry out the expert examination or for such expert to witness the expert examination done by [the Prosecutor's expert].

Even when the expert designated by the defense attorney fails to appear [to witness] the expert examination, or the defense attorney does not choose an expert for the purpose, the [Prosecutor's] expert's examination will be carried out and will be admissible at trial. In the event of failure to comply with the obligations established in the prior paragraph, the [results] of the expert's examination, if offered as evidence, shall be excluded from the trial.

SECTION 7
THE RECORD OF THE INVESTIGATION AND CUSTODY OF EVIDENCE

Article 271. Record of the investigation.

The Prosecutor should make a record of the actions that he/she takes as soon as they occur, using whatever means permit him/her to guarantee the truth and integrity of the information as well as access for those who, under the law, have the right to demand it.

The record of every action taken should include, at least, the date, the hour and the place the action took place, the public servants and other persons who participated and a report of the results.

Article 272. Preservation of evidence from the investigation.

Evidence gathered during the investigation will be preserved in the custody of the Prosecutor, who should adopt the necessary measures to prevent it from being altered in any manner.

A complaint may be made before the Judge for failure to observe the procedures set forth above, in order that the necessary means may be adopted to insure the preservation and integrity of the evidence recovered.

So long as it is authorized by the Prosecutor or, if applicable, by the Judge, the parties will have access to this evidence, in order that they may become familiar with it or prepare an expert report. The Prosecutor will maintain a special record in which he/she records the identity of the persons who are authorized to review and handle [the evidence], leaving a copy, as appropriate, of the

corresponding authorization.

Article 273. Record of actions by the police.

In the case of actions taken by the police, the police will maintain a register in which they will make a record of the evidence that helps clarify the facts and whatever other circumstances that could be useful to the investigation, as established by this Code. Instructions from the Prosecutor will also be put on the record.

These records may not replace the testimony of the police at the trial.

SECTION 8
PRESENTATION OF THE CHARGE (*FORMULACIÓN DE LA IMPUTACIÓN*)[28]

Article 274. The concept of "presentation of the charge."

The presentation of the charge is the [written] communication that the prosecutor (Ministerio Público) presents to the defendant, in the presence of the Judge, in which the investigation of the defendant with respect to one or more specific crimes is explained.

Article 275. Proper time for presentation of the charge.

The Prosecutor may present the charge when he/she believes the time is oportune to formalize the proceedings through judicial intervention.

When the prosecutor believes that judicial intervention is necessary to impose personal precautionary measures [on the defendant], he/she must present the charge first.

In the case of defendants who are arrested in *flagrancia* or in an urgent case, the Prosecutor will be required to present the charge, request a probable cause hearing and apply for imposition of precautionary measures in the same detention hearing that is referred to in Article 168.

In the case of defendants who have been arrested pursuant to a judicial warrant, once the defendant has been placed at the disposition of the court, the Prosecutor shall present the charges against him/her in a hearing called by the Preliminary Judge. In this case, once the charge is presented, the Prosecutor shall request that the court make a finding of probable cause to hold the defendant

[28] The "*imputación"* usually follows an initial investigation and is filed as part of the procedures leading to a hearing and finding of probable cause to hold the defendant for trial. (Arts. 280 *et seq*. As provided in Article 275, if the defendant is arrested *in flagrancia*, the initial charge must be filed within very short time limits. The term "*imputación*" is translated here as "the charge(s)," in order to avoid confusion with the word "*acusación*," the term used to describe the document in which a complaining party provides information about a crime, and the later term "*Acusación*," which is the formal charging document at the conclusion of the period of formal investigation, Article 294 *et seq*.

for prosecution, as well as that the Court impose such precautionary measures as are appropriate.

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Article 276. Request for a hearing to present the charge.

If the Prosecutor wishes to present the charge with respect to a person who has not been arrested, he/she will request that the judge hold a hearing, and will identify the defendant and his/her defense attorney, if he/she has been chosen, and describe the crime attributed to [the defendant], the date, place and means by which it was committed and the extent of the defendant's involvement.

The defendant will be summoned to the hearing and will be informed that he/she should appear accompanied by his/her defense attorney. The defendant will be warned in the summons that if he/she fails to appear, his/her arrest will be ordered.

Article 277. Presentation of the charge and statement of the defendant.

In the hearing [on presentation of the charge], after verifying that the defendant understands his/her fundamental rights in a criminal proceeding, or, when appropriate, after informing [the defendant] of those rights, the Judge will invite the Prosecutor to verbally describe the crime with which the defendant is charged, the date, place and means by which it was committed, the extent of the defendant's alleged participation, as well as the name of the accuser. The Judge, on his/her own authority or at the request of the defendant or his/her defense attorney, may request clarification of such details as he/she considers necessary with respect to the charge prepared by the Prosecutor.

Once the charge has been presented, [the Judge] will ask the defendant if he/she understands [the charge] and whether he/she wishes to answer the charge by giving his/her statement. If the defendant expresses his/her wish to make a statement, it will be done in accordance with the provisions of Article 359.

Once the defendant has made his/her statement or made clear that he/she does not wish to do so, the Judge will open the hearing [to consider] the other requests that the parties outline.

Before the hearing is closed, the judge should set the date for the hearing on finding probable cause to hold the defendant for prosecution, unless the defendant has waived the time limit provided in Article 19 of the Federal Constitution, and the Judge has decided the matter of [probable cause] in the same hearing.

Article 278. Effects of the presentation of the charge

The presentation of the charge will have the following effects:

I. It will suspend the running of the statute of limitations for the criminal matter;
II. The Prosecutor will lose the power to provisionally archive the case.

Article 279. Authorization to carry on proceedings without the knowledge of the affected party.

Investigative procedures that require prior judicial authorization under the provisions of this Code may be requested by the Prosecutor even before the charge is presented. If the Prosecutor requires that they be carried out without prior notice to the affected party, the judge will authorize that it be carried out in the manner requested when the seriousness of the crime and the nature of the proceeding being considered permit him/her to assume that [such confidentiality] is necessary to its success.

If, after the charge has been presented, the prosecutor requests that he/she be permitted to proceed in the manner noted in the prior paragraph, the judge will authorize it on the condition that it must be strictly necessary to the success of the requested investigative procedure.

SECTION 9
ESTABLISHING PROBABLE CAUSE TO HOLD THE DEFENDANT FOR PROSECUTION

Article 280. Requirements for establishing probable cause to hold the defendant for prosecution.

The judge, at the request of the Prosecutor, will rule that probable cause to hold the defendant for prosecution has been established when the following requirements are met:

I. The charge has been presented;
II. The defendant has given his/her preliminary statement or made clear his/her desire not to do so;
III. The evidence developed in the investigation presented by the Prosecutor supports a finding that a crime exists (*corpus delecti*) and that the defendant is the person probably responsible for that crime;
IV. It has not been demonstrated, beyond all reasonable doubt, that there is a basis for ending the criminal proceeding or [that there is a basis] for excluding the defendant as the person criminally responsible.

The term *corpus delicti* means that the objective or extrinsic elements described for the particular crime, as well as regulatory or subjective elements, if those are required, are present in the facts presented. When the act is punishable because of physical damage done to persons or things, the *corpus delecti* may be established if the [prohibited] result is established, and it was caused by a person other than the victim; the willfulness or fault of the defendant will be weighed in determining his/her [criminal] responsibility.

The order finding probable cause to hold the defendant for prosecution may

only be issued on the basis of facts that served as a basis for the presentation of the charge, but the judge may give them a different legal classification than that designated by the Prosecutor when presenting the charge.

It will be understood that an order of detention and commitment for trial has been issued, in accord with Article 19 of the Political Constitution of the United Mexican States, when [the Court] rules on the the probable criminal responsibility of the defendant.

Article 281. Fnding of no probable cause to hold the defendant for prosecution.

If any of the requirements provided for in the preceding Article is not present, the Judge will make a finding that there is no probable cause to hold the defendant for prosecution and, if applicable, will revoke the personal precautionary measures that he/she had imposed.

The order denying probable cause to hold the defendant for prosecution will not prevent the prosecutor from continuing the investigation and later filing a new charge.

Article 282. Time limits for decision on probable cause to hold the defenant for prosecution.

Immediately after Judge makes a decision regarding imposition of personal precautionary measures, if applicable, the Prosecutor will question the defendant regarding whether he/she waives the seventy-two hour period within which to establish probable cause, or whether he/she requests a doubling of that time period.

If the defendant waives the seventy-two hour period, the prosecutor should request and provide the reasons that establish probable cause that the defendant should be held for prosecution, explaining in that same hearing the evidence from the investigation that he/she believes supports the *corpus delecti* and the probable responsibility of the defendant. The court will decide the matter after hearing from the defendant.

If the defendant does not waive the seventy-two hour period for deciding the issue of probable cause, or requests a doubling of that period, the Judge will set a date for the hearing at which he/she will decide the matter. Depending on which is applicable, said hearing shall be held within seventy-two or one hundred forty-four hours following the time when the detained defendant was placed at [the court's] disposition or when the defendant appeared at the hearing for presentation of the charge. If the defendant requires judicial assistance in order to summon witnesses or experts to the hearing on his/her probable criminal responsibility, he/she should request it at least forty-eight hours before the time and date set for the hearing. If [he does not need such assistance], he/she shall present his/her evidence at the

hearing on probable cause to hold the defendant for prosecution.

Article 283. Hearing on probable cause to hold the defendant for prosecution.

The hearing on probable cause to hold the defendant for prosecution referred to in the last paragraph of the preceding Article will begin, if applicable, with the presentation of evidence that the defendant has offered or presented.[29] For this purpose, the hearing will be conducted in accord with the rules for presentation of evidence in the oral trial. Once the evidence has been presented, if it has been, the Prosecutor will be given the floor first, and then the defendant. When the arguments are completed, the Judge will decide whether or not there is probable cause to hold the defendant for prosecution.

In cases of great complexity, the judge may order a recess, which may not exceed two hours, before deciding whether or not there is probable cause to hold the defendant for prosecution.

Article 284. Evaluation of the legal proceedings.

The background of the investigation and the evidence for conviction presented in the hearing that are used for a basis for issuing the order finding probable cause to hold the defenant for prosecution lack probative value as a basis for the final judgment, except as expressly provided by law.

Article 285. Judicially-set time limits for closing the investigation.

After deciding the issue of probable cause to hold the defendant for prosecution, the Judge with jurisdiction of the case, on his/her own authority or at the request of a party, will set a date for closing the investigation, taking into account the nature of the crimes attributed and their complexity. The period [for investigation] will not exceed two months, if the crime carries a maximum penalty of no more than two years imprisonment, or six months, if the penalty exceeds that amount of time.

SECTION 10
CONCLUSION OF THE INVESTIGATIVE STAGE

Article 286. Time limit for declaring the investigation closed.

When the period within which to close the investigation has run, the

[29] The reason that the defendant goes first is that the prosecutor has already presented his evidence with the request for a probable cause hearing and in his written description to the defendant of the charges at the proceeding when the defendant is first summoned (or arrested) and decides whether to extend the period for this hearing.

Prosecutor will close [the investigation] or justify to the Judge his/her request for an extension, which must still be within the maximum time limits provided by Article 285. If the judge does not believe the extension is justified, he/she will deny the request.

If the Prosecutor does not declare the investigation closed within the time limit set, or does not request an extension, the defendant or the victim or the offended party may request that the Judge proceed to close it.

For this purpose, the Judge will inform the supervisor of the Prosecutor of the case in order that he/she may close the case within ten days. Once the period has passed without the case being closed, the Judge will order it closed and will proceed as provided in the following Article.

Article 287. Closing the investigation.

When the necessary procedures have been carried out for investigation of the crime and its perpetrators and participants, the Prosecutor will declare [the investigation] closed and, within the following ten days, shall:

I. Present the formal accusation;
II. Request a dismissal of the case; or
III. Request a suspension of the proceedings

Article 288. Dismissal.

The judge, upon petition of the Prosecutor, the defendant or his/her defense attorney, will order dismissal [of the case] when:

I. The act [charged] was not committed or does not constitute a crime;
II. It appears that the defendant's innocence is clearly established;
III. The defendant cannot be held held criminally responsible;
IV. Having exhausted [all avenues] of investigation, the Prosecutor believes that there is insufficient evidence upon which to base a charge;
V. The criminal cause of action has been extinguished for one of the reasons established by law;
VI. A new law has removed the illegal character of the conduct for which [the defendant] was being prosecuted;
VII. The crime with which the case deals has been part of another criminal proceeding in which a final judgment had been issued with respect to the defendant; and
VIII. Such other cases as provided by law.

Dismissal may be appealed in these cases, except when the order of dismissal is issued during the oral trial.

Once the request [for dismissal] is received, the Judge will notify the parties and convene a hearing within twenty-four hours where he/she will resolve the matter. The failure of the duly-summoned victim or offended party to appear will

not prevent the Judge from ruling on the matter.

Article 289. Effects of the dismissal.

A final order of dismissal has the effect of an acquittal, ends the case against the defendant in whose favor [the Judge] rules, prevents another prosecution for the same acts and terminates all precautionary measures that had been ordered.

Article 290. Suspension of the proceedings.

The Judge will order a suspension of the proceedings when:

I. He is advised that the crime for which the defendant is being prosecuted is one of those for which he/she cannot be prosecuted without a prior complaint from the offended party and [such complaint] has not been presented, or when he/she is satisfied that a legal prerequisite to prosecution has not been met;
II. The defendant is formally declared to be a fugitive from justice;
III. After committing the crime, the defendant suffered a temporary mental breakdown; and
IV. In other cases in which the law expressly requires it.

At the request of any of the parties, the judge may order the reopening of the proceedings when the reason for the suspension ends.

Article 291. Total and partial dismissal.

A dismissal will be total when it applies to all crimes and all defendants and partial when it refers to one of the crimes or one of the defendants of the various to which that the investigation extends and which have been the subject of a finding of probable criminal responsibility.

If the dismissal is partial, the proceeding will continue with respect to those crimes or those defendants that are not covered by the dismissal order.

Article 292. Powers of the Judge with respect to dismissal.

If the victim or offended party opposes the request for dismissal prepared by the Prosecutor, the defendant or his/her defense attorney, the Judge will decide the matter based on the arguments propounded by the parties and the merits of the case.

If there is no objection, the request for dismissal wil be granted, without affecting the right of the parties to appeal the decision.

Article 293. Reopening of the investigation.

Before the conclusion of the intermediate hearing, the parties may renew their request for particular investigative steps that they had asked the Prosecutor to

undertake after the finding of probable cause to hold the defenant for prosecution, and which he/she had refused.

If the Judge accepts the request, he/she will order the Prosecutor to reopen the investigation and proceed to carry out the procedures within the period he/she sets. In this hearing, the Prosecutor may request an extension of time only once.

The judge will not order nor re-order those steps that he/she had previously ordered at the request of the parties that had not been completed because of [that party's] negligence or fault, or any that were clearly irrelevant, or those that had as their purpose providing support for open and notorious acts, or those that were requested purely for purposes of delay.

Once the period or extension of time has passed, or even before then if the steps have been completed, the Prosecutor will again close the investigation and proceed in the manner provided for in Aricle 287.

SECTION 11
THE [FORMAL] ACCUSATION

Article 294. Content of the formal accusation.

The formal accusation shall contain, in clear and precise form, [the following]:

I. The identity of the accused and his/her defense attorney;

II. The identity of the victim or offended party, unless this is not possible;

III. An account of the circumstances of the crime and the means by which it was committed, as well as its legal classification;

IV. A review of those circumstances that are present that modify the degree of criminal responsibility, even if they are subsidiary to the principal charge;

V. Whether the defendant is alleged to be the author or a participant in the crime;

VI. A statement of other applicable legal provisions;

VII. The evidence that the Prosecutor proposes to produce at the oral trial;

VIII. The penalty that the prosecutor (Ministerio Público) is seeking and the evidence relevant to the particular penalty [sought], and, if applicable, that [evidence] relevant to a lack of legal basis for alternatives to a sentence of imprisonment or suspension of sentence;

IX. If applicable, the damage the [the prosecutor] believes [the defendant] caused to the victim or offended party and the nature of the evidence that is being offered to prove the damage;

X. If applicable, the request that the plea agreement procedure be applied [to the case].

Article 295. Subsidiary accusations.

The Prosecutor may assert alternative claims and also classify a crime differently than the manner set out in the order establishing probable cause to hold the defenant for prosecution.

Article 296. Offer of proof.

If, in accord with the provisions of subsection VII of Article 294, the Prosecutor offers evidence from witnesses, he/she will provide a list, identifying them by first name, last name, profession and address or place of residence, and pointing out the materials on which their testimony will most depend. When the Prosecutor offers as evidence the testimony of a person who has received a benefit as the result of a plea agreement, as provided by section II of Article 83 of this Code, he/she will be required to inform the defense of that fact and attach to the written accusation the decision in which [the court] ordered that the plea agreement be executed.

Article 297. Experts' reports.

In the formal written accusation, the Prosecutor should identify the expert or experts whose appearance he/she is requesting, indicating their titles and qualifications, and should attach the supporting documents, as well as the report of the expert, which shall contain the following:

I. The description of the person or material examined and the condition and form in which it is found.

II. An account of the circumstances under which all examinations were carried out and their results; and

III. The conclusion that the experts have reached in light of the data above, following the principles of science and the rules governing their area of expertise or position.

In no case may the expert's report be substituted for the testimony of the expert at trial. When offering material evidence that was taken into custody, [the expert] shall attach the documents relevant to establishing their chain of custody.

Article 298. Statement of the defendant.

The defendant's statement given before the Prosecutor may only be admitted [in evidence] when the Preliminary Judge certifies the following:

I. The statement has been given in the presence of his/her defense attorney;

II. The statement has been video-recorded;

III. The Prosecutor has confirmed that the statement was given freely and voluntarily and that the defendant was previously advised of his/her right not to make a statement;
IV. The defendant was not illegally detained at the time [the statement] was made; and
V. The defendant was informed of his/her rights beforehand, as required.

CHAPTER II
THE INTERMEDIATE STAGE

SECTION 1
DEVELOPMENT OF THE INTERMEDIATE STAGE

Article 299. Objective.
The objective of the intermediate stage proceedings is to [rule on] the offer and admission of evidence as well as to rule on [requests for] the exclusion of facts in controversy that will be the subject matter of the oral trial.

Article 300. Summons to the intermediate stage hearing.
After the formal accusation is presented, the judge will order that all the parties be notified and will summon them within twenty-four hours thereafter to the intermediate hearing, which shall take place not less than twenty nor more than thirty days from the date of the notice. The defendant, as well as the victim or offended party, will be provided with a copy of the accusation together with a record of the supporting evidence accumulated during the investigation that is available [for their review].

Article 301. Actions by the victim or offended party.
Up to ten days before the date set for the intermediate hearing, the victim or the offended party may become an auxiliary-accuser [to the prosecutor] and in that capacity, in writing, may:
I. Point out the material and formal defects in the written accusation and require that they be corrected.
II. Offer evidence that he/she believes necessary to supplement the accusation by the Prosecutor;
III. Solidify his/her claims, offer evidence for the oral trial and quantify the amount of damages and loss.

Article 302. The auxiliary-accuser.
The auxiliary-accuser shall prepare his/her materials in writing, in which

case the formalities prescribed for the accusation prepared by the Prosecutor will be applicable to whatever he/she prepares.

The participation of the victim or offended party as an auxiliary-accuser will not alter the powers granted to the Prosecutor nor exempt him/her from his/her responsibilities.

Article 303. Period for notification.

The defense attorney shall be notified of motions made by the victim or offended party not later than five days before the intermediate hearing is held.

Article 304. Powers of the defendant or his/her defense attorney.

Until the day before the beginning of the intermediate hearing, in writing, or orally, at the beginning of said hearing, the defendant or his/her defense attorney may:

I. Make whatever observations they believe are appropriate regarding the written accusation, and if they consider it germane, request its correction;

II. Present the defenses referred to in the following Article;

III. Put forward the defense arguments that they consider necessary and point out the evidence that they will present at the [intermediate] hearing in accord with the provisions of Article 296.

IV. Offer evidence regarding the individualization of the punishment or the basis for alternatives to a punishment of imprisonment or for suspension of [imprisonment]; and

V. Propose to the parties a hearing to consider pre-trial diversion, a plea agreement or mediation.

Article 305. Issues [that may be raised].

The defendant may raise the following issues/claims:

I. Lack of competency;
II. *Lis pendens*;
III. *Res judicata*;
IV. The absence of authority to proceed criminally or of some other procedural requirement, when the Federal or State Constitution or the law demands it.
V. The termination of the criminal proceeding.

Article 306. Issues during the oral trial.

Irrespective of the provisions of Article 304, if the matters set forth in Sections III and V of the prior Article were not raised or discussed in the

intermediate hearing, they may not be raised at the oral trial.

SECTION 2
CONDUCT OF THE INTERMEDIATE HEARING

Article 307. Orality and immediacy.

The intermediate hearing will be conducted under the supervision of the Judge and will be conducted orally, for which reason, arguments and motions of the parties will never be presented in writing.

Article 308. Summary of the presentations of the parties.

At the beginning of the hearing, each party will make a brief summary statement of his/her presentation.

Article 309. Appearance of the Prosecutor and the defense attorney.

The uninterrupted presence of the Judge, the Prosecutor and the defense attorney is a prerequisite to the validity of the hearing.

The failure of the Prosecutor or the defense attorney to appear will be communicated immediately by the Judge to their supervisors in order that they may be replaced as soon as possible. If a private defense attorney fails to appear, the Judge will designate a public defender for the defendant and will stay the hearing for a reasonable time, depending on the circumstances of the case.

Article 310. Resolution of issues raised.

If the defendant raises a topic in accord with the provisions of Article 306, the Judge will open a hearing on the subject. At the same time, if he/she believes it appropriate, he/she may allow the introduction of evidence that he/she believes is relevant.

The Judge will resolve immediately questions of competency, *lis pendens* and lack of legal authority to proceed.

With regard to termination of the criminal case and *res judicata*, the Judge may consider one or more of those [issues] that have been presented and order dismissal, so long as the basis for the decision is sufficiently supported by the results of the investigation. If not, he/she will leave resolution of the issue raised for the oral trial.

Article 311. Argument on the evidence presented by the parties.

During the intermediate hearing, each party will be able to present the requests, observations and explanations that the parties consider relevant to their aim of having evidence excluded that is being offered by the other parties.

On request, any party may present evidence at the hearing directed at

demonstrating the illegality of any of the evidence offered by the opposing party.

The Prosecutor may offer evidence at the hearing only for the purpose of directly contradicting the evidence offered by the defense. [30]

Article 312. Joinder and severance of accusations.

When the Prosecutor prepares various accusations that the Judge believes should be joined in the same trial, and only when it would not prejudice the rights of the defense, he/she may join them and order the opening of a single trial, if the crimes are connected to each other because they involve the same crime, the same defendant or because the same evidence should be considered.

When considering the case in a single trial could create serious difficulties in the organization or progress [of the trial] or affect the rights of the defense, the Judge may order the opening of separate trials for distinct crimes or for different defendants who are included in the same accusation, so long as proceeding in this manner would not create a risk of contradictory decisions.

Article 313. Stipulation agreements.

During the hearing, the parties may join in requesting that the Judge accept certain matters as fact that will not be argued at trial.

The Judge will authorize stipulation agreements only when he/she considers them justified because the evidence from the investigation ensures the certainty of the fact.

In such case, the Judge will state in the order on opening the oral trial (*resolución de apertura de juicio*)[31] those [matters] that are taken as fact and those that should be presented at trial.

Article 314. Exclusion of evidence from trial.

After examining the evidence presented and listening to the parties at the hearing, the judge will issue an order, based on law, stating what [materials] will be excluded from evidence, including that [evidence] which is clearly irrelevant, that which has as its purpose to validate open and notorious acts, and that which is inadmissible under this Code.

If he/she determines that approval of testimony and documentary evidence in the same form in which it has been offered will slow the trial, he/she also will

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[30] At this stage, the Prosecutor continues to be limited to the evidence he/she offerd to support the formal accusation, except for evidence in rebuttal of a defense claim.

[31] The *resolución de apertura de juicio*, is equivalent to the written pretrial order which is used in many jurisdictions in the United States as the written order memorializing rulings on suppression motions and other legal issues and conflicts over evidence and which is used as a guide to rulings during the trial. In Mexico, all pre-trial proceedings are handled by the Preliminary Judge, whose final act is this order. Not until this order is issued does the case go to the three trial judges who make up the Trial Court (*Tribunal*).

order that the party offering [the evidence] reduce the number of witnesses or documents, when [the party] wants to prove the same facts with [each of] them, or when the matters [about which they would testify] do not have substantial relevance to the matter that is being tried. After hearing the parties, the Judge may decide how many experts should participate, depending on the importance of the case and the complexity of the matters to be decided, or he/she may limit the number when it would be excessive and would slow the trial.

The Judge also will exclude evidence derived from facts or proceedings that have been declared null and void and that [evidence] obtained in disregard of fundamental rights. At the same time, in cases involving crimes against sexual liberty and security, the Preliminary Judge may exclude evidence that seeks to introduce the victim's prior or subsequent conduct, unless it is clearly justified, in which case adequate protective measures for the victim will be adopted.

The Judge, in the order on opening the oral trial, will admit the rest of the evidence that has been offered.

Article 315. Order opening the oral trial.

After completing the hearing, the Judge will issue the order on opening the oral trial. This order will state:

I. The Trial Court with jurisdiction to hear the oral trial;
II. The accusation or accusations that will be subject of the trial and the formal corrections that have been incorporated in them;
III. The facts that have been stipulated as true;
IV. The evidence that will be introduced at the oral trial and the evidence that will be presented at the hearing on individualization of criminal penalties and restitution for damages; and
V. The identity of those who will be summoned to the trial, with mention of sources of evidence, who must be paid in advance for their transportation and housing, as well as the respective amounts.

CHAPTER III
THE TRIAL

SECTION 1
GENERAL PROVISIONS

Article 316. Principles.

The trial is the stage [in the proceedings] for deciding the essential issues of the case. It will be conducted based on the accusation and will ensure that the principles of orality, immediacy, public access, concentration of the proceedings

(*concentración)*,[32] confrontation and cross-examination (*contradicción*)[33] and continuity are implemented.

Article 317. Restrictions on judges.

The judges who have participated in the case at stages prior to the oral trial may not participate as members of the Trial Court for the oral trial.

SECTION 2
PREVIOUS PROCEEDINGS

Article 318. Date, place, integration and summonses.

The Preliminary Judge will provide the order on opening the trial to the Trial Court with jurisdiction of the case within forty-eight hours after notice [to the parties]. He/she also will place the defendants subject to pretrial detention or other personal cautionary measures at the Trial Court's disposition.

Once the case is within the jurisdiction of the Trial Court, the Presiding Judge will order the date for the oral trial, which shall take place no earlier than fifteen days nor more than sixty calendar days from when their jurisdiction was established. He/she will also make known the names of the judges who will compose the Trial Court and will order summonses for all those who are required to be present. The defendant must be summoned at least seven days in advance of the opening of trial.

SECTION 3
PRINCIPLES

Article 319. Immediacy.

The trial will be conducted in the uninterrupted presence of the members of the Trial Court and the rest of the parties who legitimately are part of the case, their defense attorneys and their representatives. The defendant may not leave the trial proceedings (*debate*) without the permission of the Trial Court.

If, after his/her statement, the defendant refuses to remain in the trial

[32] "*Concentration*" refers to the relatoively short and consolidated period of time during which the trial takes take place. Because the trial is oral and not written, and the time for decision after receiving the evidence is short, this new procedural Code radically shortens the time a case remains in process from the amount of time defendants remained in the criminal justice system prior to these reforms.

[33] "C*ontradicción*" incorporates the new concept of the defendant's right to see and confront the evidence against him/her in an open oral trial and includes his/her right to cross-examine witnesses.

proceedings, he/she will be placed in custody in a nearby room and will be represented for all purposes by his defense attorney. He/she will be made to appear for those particular proceedings when his/her appearance is required for the trial to go forward. If the defense attorney does not appear for the trial or he/she withdraws from the trial proceedings, the defense will be considered abandoned and [the Court] will proceed to immediately replace him/her with a public defender until the defendant chooses another defense attorney, in accord with the applicable rules of this Code.

If the Prosecutor does not appear at trial or withdraws without just cause from the trial proceedings, he/she will be replaced immediately, in accord with procedures determined by the State Prosecutor General.

The substitute Prosecutor or the defense attorney may request that the Trial Court postpone the beginning of the trial for a reasonable period in order that they may adequately prepare their participation in the trial. The Trial Court will decide the [length of postponement], taking into account the complexity of the case, the circumstances under which the Prosecutor abandoned it and the possible effects of the postponement.

If the auxiliary-accuser or his/her representative does not attend the trial or withdraws from the trial proceedings, the trial will continue without his/her presence, without prejudice to his/her obligation to appear as a witness.

Article 320. The defendant at trial.

The defendant will attend the trial free of any personal restraints, but the presiding Judge may arrange such monitoring as necessary to prevent his/her absconding from justice or to maintain security and order.

If the defendant has been at liberty, in order to ensure that the trial or a particular proceeding of which he/she is a part goes forward, the Trial Court may arrange for him/her be to brought by the police, and even for his/her detention at a specified location, if that is clearly necessary. [The Trial Court] may also change the conditions under which the defendant is at liberty or impose personal precautionary measures that do not involve detention.

These measures only may be imposed based on a request from the Prosecutor founded in law and will be governed by rules regarding the denial or restriction of liberty during the proceedings.

Article 321. Public access.

The trial will be open to the public, but, under exceptional circumstances, the Trial Court may decide, on its own authority, that the [proceedings] will be closed, totally or partially, when:

I. It could affect the physical safety or [right to] privacy of members of the Trial Court, one of the parties, or a person summoned to participate in [the trial].

II. Public order or the security of the State could be seriously affected;
III. It might put at risk an official, personal, commercial or industrial secret, the undue disclosure of which is punishable; or
IV. [Closing the proceedings] is expressly provided for in this Code or another law.

The order will be grounded in law and be made part of the record of the oral trial. Once the reason [for secrecy] disappears, the public will be permitted to reenter and the person presiding over the trial, being careful not to reveal that matter that remains protected, will briefly explain the essence of what occurred in private. The Trial Court may impose a confidentiality order on the participants in the proceeding with regard to the circumstances that they have witnessed, which order will be recorded in the trial record.

In each case, using an order grounded in law, the Trial Court will list the conditions under which the right to disclose information may be exercised and may restrain or prohibit the recording, photographing, publishing or reproduction of the hearing, when the interests described in this Article might be affected or when it would limit the right of the defendant or the victim or the offended party to an impartial and fair trial.

Article 322. Privilege to attend the trial.

Representatives of the mass media who express their wish to attend the trial will have the privilege to attend the trial attend ahead of the public, but simultaneous oral or audio-visual transmission of the hearing, or recording for that purpose, will require the prior authorization of the Trial Court and the consent of the defendant and of the victim or offended party, if they are present.

Article 323. Restrictions on access.

Those persons who attend the trial must maintain order and remain silent when they are not authorized to ask questions or to answer questions that are prepared for them. They may not carry arms or other objects likely to interrupt the course of the trial nor make their opinions known in any way.

Access will be denied to any person who conducts himself in a manner incompatible with the seriousness and purpose of the trial. Members of the armed forces or uniformed security forces will be prohibited from entering except to fulfill their surveillance or custodial roles. Similarly, those persons wearing union or political emblems may also be barred from the courtroom.

The Judge presiding over the trial may limit the entry of the public to a certain number of people, depending on the capacity of the courtroom.

Article 324. Continuity.

The oral trial will be carried on in continuous manner and may be extended

in consecutive sessions until its conclusion. For this purpose, consecutive sessions mean those that take place on the following day or on the next day of normal Trial Court operations.

Article 325. Stays

As an exception, the trial may be stayed for a maximum period of ten working days, when:

I. There is a need to resolve a related question that, by its nature, cannot be resolved immediately;

II. An activity must be carried out outside the hearing room, including when a an unexpected disclosure makes it necessary to supplement the investigation, and it is not possible to complete the activity in the interval between two sessions;

III. Because witnesses, experts or interpreters fail to appear, it is necessary to summon them again and it would be impossible or inconvenient to continue the trial until they appear [or] even are brought forcibly by the police.

IV. The Judge or a defendant is so ill that he/she can't continue to participate in the trial.

V. The defense attorney or the auxiliary-accuser or his/her representative can't be replaced immediately, as contemplated in the prior subsection, or in the event of death or permanent disability.

VI. The Prosecutor needs to amend the charge in light of the evidence presented and the defense attorney requests the extension once the charge is made in the accusation; or

VII. A catastrophe or an extraordinary occurrence makes continuation impossible.

The Trial Court will verify the reason given for the stay, and may gather the relevant evidence for that purpose.

The Trial Court will make the decision regarding the stay and will announce the day and hour when the trial will resume. This announcement will serve as notice for all of the parties. Before the new hearing begins, the Presiding Judge will summarize briefly those proceedings already completed. The Judges and the Prosecutor may participate in other trials during the period of the stay, unless, because of the complexity of the case, the Trial Court decides otherwise in a decision grounded in law.

The Presiding Judge will order those recesses that are necessary, indicating the hour when the trial will resume. The weekend or holidays or vacation days will be considered a recess, so long as the trial continues on the next working day.

Article 326. Interruption.

If the oral trial is not resumed within ten days after the stay, the trial will be

considered interrupted and must begin again, preceded by an order nullifying all that was done in [the first trial].

Article 327. Orality.

The trial will be oral with respect to all pleadings and arguments of all the parties, as well as all the testimony, the admission of evidence and, in general, all actions by those participating in it.

The decisions of the Presiding Judge and the orders of the Trial Court will be delivered orally, with a statement of their basis in law and fact when the case requires it. [The oral decision] will serve as notice to all, but the dispositive part of the decision will then be recorded in the record of the trial.

SECTION 4

SUPERVISION AND DISCIPLINE

Article 328. Supervision of the oral trial.

The Presiding Judge of the Trial Court will supervise the oral trial, order and authorize relevant readings, issue appropriate admonitions, administer oaths, moderate the discussion and prevent improper interruptions.

If any of the parties files a motion to reverse a decision of the President, the Trial Court will decide.

Article 329. Discipline during the trial proceedings.

The Judge presiding over the oral trial will have disciplinary authority during the trial, and will take care to maintain order and to demand of the participants that they and their assistants act with the required respect and consideration, correcting immediately the errors that they commit. For this purpose [the Judge] may apply any one of the following measures:

I. A warning;
II. A fine in the amount of one to twenty-five days' minimum salary;
III. Exclusion from the courtroom;
IV. Detention for up to thirty-six hours; or
V. Public expulsion from the courtroom.

If the person committing the infraction is a day laborer, laborer or worker, he/she may not be fined more than one day of his/her daily wage or salary for a day. In the case of workers who are not salaried, the fine may not exceed the equivalent of one day's income.

If the violator was the Prosecutor, the defendant, his/her defense attorney, the victim or the offended party or his/her representative and it was necessary to exclude them from the courtroom, the rules relating to their absence will apply.

In a case in which, despite the measures adopted, order cannot be restored, the Presiding Judge will stay the proceedings until the conditions exist that would permit [the trial] to continue its normal course.

SECTION 5
GENERAL PROVISIONS [RELATING TO] THE EVIDENCE

Article 330. Freedom [in presentation of] evidence.

All those facts and circumstances that are relevant to a proper resolution of the case on trial may be proved by whatever form of evidence is produced and admitted in accord with law.

Article 331. Legality of the evidence.

Evidence will not have value if it has been obtained illegally or if it was not admitted at the proceedings pursuant to the provisions of this Code.

Article 332. Timing for the formal admission of the evidence.

Except for those exceptions expressly provided by law, evidence that will be used as a basis for the final judgment shall be presented during the oral trial.

Article 333. Evaluation of the evidence.

The Trial Courts may consider the evidence freely, but they may not contradict the principles of logic and the precepts of experience and scientific knowledge.

In its findings of fact (*motivacion*),[34] the Trial Court should have a command of all the evidence presented.

In their evaluation of the evidence for the final judgment (*sentencia*), [the Trial Court] will be required to point to the kind or kinds of evidence that they found that support each of the facts and circumstances that they accept as proven. These factual grounds should permit replication of the reasoning used to reach the conclusions of the final judgment.

SECTION 6
TESTIMONY

Article 334. Duty to testify.

Except as otherwise provided, every person will have the duty to attend when summoned by the court, to testify truthfully with regard to what he/she knows

[34] *Motivacion* is the reasoning on relevant facts at issue that must be cited by a court in taking a specific action

and to be questioned. Likewise, he/she should not conceal facts, circumstances or evidence.

No witness will be required to testify to facts that might incriminate him/her. If, after appearing, he/she refuses to testify without a legitimate reason, after appropriate warnings, he/she may be placed under arrest for up to twelve hours, and if at the end of that period he/she persists in his/her position, a criminal action will be brought against him/her for disobedience of a lawful court order.

Article 335. Power to decline to testify.

Unless they were complainants [in the case], a spouse, mistress or male lover or a person who has lived permanently with the defendant during at least two years prior to when the crime was committed, a tutor, a guardian, a pupil of the defendant and his/her ascendants, descendants or collateral relatives by blood to the fourth degree and by marriage to the third degree, may decline to testify.

The above mentioned persons will be informed before they make a statement of their right to decline, but if they agree to testify, they may not refuse to answer the questions presented.

Article 336. Duty to maintain confidences.

Testimony of persons who have an obligation to maintain a confidence with respect to the subject of their testimony because they have the information as a result of their position or profession, as well as [testimony by] public servants whose information may not be divulged under applicable laws, will not be admissible.

Nevertheless, these persons may not refuse to testify when the interested party releases them from their obligation of confidentiality.

If they are summoned, they shall appear and explain the reasons why they are obliged to maintain confidentiality and decline to testify.

Article 337. Summoning of witnesses.

A summons to testify will be issued for the examination of witnesses, except when an interested party promises to produce them. Under this last hypothesis, if the offer is not fulfilled [the witness does not appear], the evidence will be considered waived. In urgent cases, witnesses may be summoned by whatever means guarantees that they receive the summons, of which a record will be made. In addition, a witness may attend without a prior summons.

If the witness resides in a place far from the seat of the court and lacks economic means to bring himself there, whatever is necessary to assure his/her appearance will be made available.

With regard to witnesses who are public servants, the public entity for which they work will adopt appropriate measures to ensure their appearance. If these

necessary measures occasion costs, the costs will be the responsibility of that [public] entity.

Article 338. Witnesses' obligation to appear.

If a witness, properly summoned and without just cause, fails to appear at the trial, the Judge, in the order agreeing to have [the witness] appear, will order the municipal, State or ministerial police to locate him/her and immediately bring him/her to the place of trial, without it being necessary to send a new summons or first exhaust any other means of enforcement. Refusal to appear at the trial will be grounds to arrest [the witness] for up to thirty-six hours, at the end of which, if he/she persists in his/her refusal, [the Judge] will notify the Prosecutor.

Public authorities are obliged to provide prompt and diligent support to the Judge to ensure the mandatory appearance of witnesses. As provided by this Code, the Judge may take enforcement action against the authorities if they do not fulfill or delay [in complying with] the court's rulings.

Article 339. Formalities of testimony.

Before the proceeding starts, the witness will be instructed regarding his/her obligations and the legal consequences if he/she fails to fulfill them. He/she will be placed under oath to tell the truth, be warned of the penalties for testifying falsely before the court and will be questioned regarding his/her first name, surname, marital status, profession, home address and family background.

In the case of minors of less than eighteen years of age, they will only be admonished to tell the truth.

If the witness fears for his/her physical safety or that of someone with whom he/she lives, he/she may be permitted not to state his/her home address publicly. A confidential record will be made of this, with disclosure prohibited, but the identity of the witness may not be concealed from the defendant, nor may [the witness] be exempted from appearing at the trial.

Article 340. Exceptions to the requirement to appear.

The following persons will not be required to respond to the judicial summons described in the previous Articles, and they may testify in the form noted for special testimony:

I. The President of Mexico (*de la República*); the state Secretaries of the Federation; Ministers of the Supreme Court of Justices of the Nation; the Attorney General of Justice of the Republic:

II. The Governor of the State [of Chihuahua]; the Secretary General of the Government; the State Attorney General; the members of the State Legislature; the Magistrates of the [State] Supreme Court and State Electoral Tribunal; the President of the State Electoral Institute; the

President of the Chihuahuan Institute for Transparency and Access to Public Information; the President of the State Commission on Human Rights and the Municipal Presidents;

III. Foreigners enjoying diplomatic immunity in the country, in accord with treaties in force on the subject; and

IV. Those, whose serious illness or other impediment recognized by the Trial Court, make it impossible for them to do so,

With regard to all, if the persons listed in the previous sections waive their right not to appear, they will give their testimony in conformity with the general rules.

Article 341. Special testimony.

When the testimony of minors, victims of crimes of rape or of kidnapping is necessary, without regard to the stage of the proceedings, the Judge may order that [the testimony] be received in a closed session, with the assistance of family members or specialized experts. For purposes of these proceedings, adequate audio-visual techniques shall be used.

The same rule may be applied when a minor is testifying for whatever reason.

Those persons who cannot attend the Trial Court because of physical disabilities will be questioned in the place where they are located, and their testimony will be transmitted by remote reproduction systems. If that is not possible, the testimony will be recorded by whatever means and will be played at the appropriate time in the trial.

These special procedures shall be carried out in a manner that does not impair the right of defense and confrontation.

Article 342. Protection of witnesses.

In serious and qualifying cases, the Trial Court may arrange for special measures to protect the security of the witness. Said measures will continue for such reasonable time as the Trial determines and may be renewed as many times as necessary.

In like manner, the Prosecutor will adopt appropriate measures to provide necessary protection to the witness before or after he/she has given his/her testimony.

SECTION 7
EXPERT OPINIONS

Article 343. Evidence from experts.

Expert evidence may be offered when it becomes necessary or useful to

have special knowledge of some science, art, technical skill or trade in order to examine persons, acts, objects or relevant circumstances.

Article 344. Official title.

If the area of the expert's science, art, technical skill or trade is regulated, experts must have official certification in the subject matter relevant to the issue on which they will give an opinion and must not have any impediments to their practicing their profession. If [the area of expertise is not regulated], a person shall be designated who is clearly competent and who ideally belongs to a union or professional group related to the activity that is the subject of his/her expertise.

These requirements shall not be applied to those who testify regarding facts or circumstances they have learned first-hand, even if in testifying about these [circumstances], they use the special skills that they have in a science, art, technical skill or profession.

Article 345. Lack of legal grounds for disqualification of experts

Experts cannot be disqualified. Nevertheless, during the oral trial, questions may be directed at them aimed at determining their impartiality or their suitability, as well as the scientific or technical strength of their conclusions.

Article 346. Third party participation in the proceeding.

If it is necessary, experts and other third parties who participate in the proceeding may ask the relevant authority [the court or Prosecutor] to adopt measures offering them protection provided for witnesses.

SECTION 8

EXPERT OPINIONS

Article 347. Definition of a document.

[For purposes of this Code], a document will be defined as all material support containing information relevant to some fact, even if it is unsigned.
[Application of this provision] cannot be denied to things published in the press and to any material that is generally accepted by the public as credible.

Article 348. Authenticity of documents.

Except when there is evidence to the contrary, public documents, signed by the person or authority that issues or certifies them, will be presumed to be authentic.

Article 349. Methods of authentication and identification.

The authenticity and identification of documents not mentioned in the previous Article, may be proved by means such as the following:

I. Identification by the person who has created, typed, printed, signed or produced the document
II. Identification by the party against whom the document is offered.
III. Certification by the entity responsible for certifying digital signatures of individuals and companies.
IV. [Identification] made in the report of an expert in the relevant discipline.

Article 350.General criteria.

When a document is introduced with the purpose of having it evaluated as evidence and admitted, the original of that document shall be offered as the best evidence of its content.

Article 351. Exceptions to the "best evidence" rule.

Exceptions to the previous provision include public documents or authentic copies or copies of those documents of which the original has been lost or are in the possession of one of the parties, or voluminous documents of which only a portion is needed or, finally, in cases when there is an agreement of the parties that production of the original is unnecessary. The foregoing is not a basis to object [to use of the original] when the original is indispensable to carrying out a specialized technical examination or is part of the chain of custody.

SECTION 9

OTHER MEANS OF PROOF

Article 352. Other means of proof.

In addition to those [means of proof] provided for by this Code, other distinct means of proof may be used, provided the constitutional rights and powers of the persons involved are not impaired and they do not affect the established system (*sistema institucional*). The manner in which [the evidence] is admitted and the adequacy of the procedure will be measured by the most analogous means of proof provided for in this Code.

Article 353. Disclosure of material evidence.

Prior to its admission at trial, objects and other evidentiary materials supporting conviction shall be disclosed to the defendant, to the witnesses and to the experts in order that they may identify them or be informed about them.

SECTION 10
COURSE OF THE ORAL TRIAL

Article 354. Motions during the oral trial.

Motions made in the course of the oral trial shall be resolved immediately by the Trial Court, except for those that, by their nature, make it necessary to stay the hearing. Decisions made with respect to these motions will not be subject to appeal.

If, during the course of the oral trial, one of the parties files a motion to dismiss, or the Prosecutor declines to proceed with the accusation, the Trial Court will resolve the matter in the same hearing, in accord with Article 288. The Trial Court may reject the defendant's motion to dismiss as clearly without legal basis, or it may withhold its decision until issuance of the final judgment.

Article 355. Severance

If the written accusation encompasses several punishable acts that are attributed to one or more defendants, the Trial Court, on its own authority or at the request of a party, may determine that the trials should be held separately, but in a continuous form. In such a case, upon the conclusion of the trial of each crime, the Trial Court will rule on culpability.

Article 356. Legal reclassification [of the charges].

In his/her opening or closing argument, the Prosecutor may propose a legal classification of the crime distinct from that in his/her written formal accusation. In such case, with regard to the new legal classification proposed, the Presiding Judge immediately will give the defendant and his/her defense attorney an opportunity to address the court on the matter and inform them of their right to ask for a stay of the trial in order to offer new evidence or to prepare their case. When this right is exercised, the Trial Court will stay the trial for a period that in no case may exceed the period established for a stay of trial as provided by this Code.

Article 357. Correction of errors.

Correction of simple formal errors or the inclusion of any circumstance, which does not change the formal accusation in an essential way or make the defense impossible, may be done during the trial without [the change] being considered a broadening of the accusation.

Article 358. Opening of the trial.

On the day and hour set, the Trial Court will convene the trial in the courtroom, with the Prosecutor, defendant, defense attorney and other participants

in attendance. At that time, [the Court] will confirm the availability of the witnesses, experts, interpreters and other persons summoned to the trial. The Trial Court will declare the opening of trial and order the experts and witnesses to leave the courtroom.

When a witness or an expert is not present at the beginning of trial, but has been notified that he/she is required to be present at a later hour and it is certain that he/she will appear, the trial may begin.

The Presiding Judge will point out the formal accusations that are the subject of the trial as contained in the order for opening of trial [and] the stipulations of fact that the parties have agreed on, and admonish the defendant that he/she should pay attention to what he/she hears.

Immediately thereafter, the Trial Court will give the floor to the Prosecutor to present the formal accusation, after which he/she will give the floor to the defense attorney to state the [legal and factual] grounds on which he/she bases the defense.

Article 359. The defense and statement of the defendant.

The defendant may make his/her statement at any time during the trial. In such case, the Presiding Judge will permit him/her to make it freely or in response to questions posed by his/her defense attorney. If the defendant is willing to answer questions from the prosecutor or the auxiliary accuser, he/she may be cross-examined by them in accord with Article 361. The Judge may also ask questions for the purpose of having the defendant clarify what he/she has said, which [questions] he/she may decline to answer if he/she wishes.

At whatever stage in the trial, the defendant may ask to be heard in order to clarify or supplement his/her testimony.

The defendant will always be at liberty and not subject to any security measures when he/she testifies, unless [the measures] are absolutely necessary to prevent his/her escape or injury to others. Such circumstances will be noted in the trial record.

Article 360. Order for the admission of evidence at trial.

Each party will determine the order in which they will present their evidence, with that of the Prosecutor and auxiliary-accuser being offered first, and then that offered by the defendant.

Article 361. Experts and witnesses at the oral trial hearing.

During the trial, the experts and witnesses shall be questioned personally. Their testimony shall not be replaced by reading from the records in which their earlier statements were recorded or from other documents that contained them.

The Presiding Judge will identify the expert or witness, place him/her under

oath to tell the truth and advise him/her of the penalties that are imposed if he/she testifies falsely.

Witnesses and experts will be subject to questioning by the parties during their testimony. The questioning will be done initially by the party offering the evidence and then by the others. If the auxiliary-accuser participates in the trial, or the trial is against two or more defendants, the questioning will be done by the Prosecutor, the auxiliary-accuser and then the defense attorneys for each of the defendants, as applicable.

Finally, members of the Trial Court may question the witness or expert in order to clarify their testimony.

At the request of one of the parties, the Trial Court may authorize a further questioning of witnesses or experts who have already testified in the trial. During the renewed questioning, the questions may refer only to the answers given by the witness or expert during cross examination.

Before testifying, the experts and witnesses may not communicate among themselves, nor see, hear nor be informed about what has occurred during the trial.

Article 362. Interrogation methods.

During their questioning, the parties who have presented a witness or expert may not ask the questions in a manner that suggests the answer.

During the cross-examination, the parties may confront the expert or witness with their own statements or other versions of the facts presented at trial.

In no case will the Court admit questions that are tricky, ambiguous or contain more than one fact, nor those that illegitimately coerce a witness or expert, nor those that are vaguely phrased.

These same principles shall be applied to the defendant when he/she consents to give his/her statement.

The decisions of the Trial Court with respect [to the form of questioning] shall not be subject to appeal.

Article 363. Reading of prior statements at the oral trial hearing.

After they are read or reproduced, the record in which prior statements of witnesses, experts or defendants are recorded may be introduced at trial when:

I. Testimony exists that has been received in accord with the rules on taking evidence in anticipation of trial,[35] without prejudice to the parties requesting the personal appearance of the witness or expert when that is possible;

II. The witness, unexpectedly, has died or has lost his/her senses or ability to testify at trial, and for this reason it was not possible to request that he/she

[35] See Articles 267 through 269, above.

testify ahead of time;

III. The failure of the witness, expert or co-defendant to appear [to testify] is attributable to the defendant.

IV. The records contain statements given by co-defendants who have evaded justice or who have been sentenced for the crime which is the subject of the trial and that were offered before a judge, in conformity with the relevant rules. [This provision] does not affect their testifying at trial, if they agree; and

V. All the parties agree that the records and reports may be admitted at trial, with approval of the Trial Court.

Article 364. Introduction of the defendant's prior statements before the Prosecutor.

When the defendant has exercised his/her right to testify at the oral trial, the statement of the defendant before the Prosecutor, which was admitted by the Preliminary Judge, may be introduced at the oral trial by [video–reproduction], this without prejudice to that which is provided in the following Article.

Article 365. Reading to refresh memory and to overcome contradictions at trial.

During the questioning of the defendant, a witness or an expert, a portion of their prior statements or documents they have written may be read to them, when it is necessary to refresh their memory or to demonstrate or overcome contradictions or to request relevant clarifications.

Article 366. Reading or exhibiting documents, objects, and other media.

Documents will be read and exhibited at trial, with an indication of their source. Objects that constitute evidence must be produced and may be examined by the parties. Recordings, audio-visual evidence, computer data or any other form of electronic evidence, in which one can have confidence, will be reproduced at trial by whatever means is suitable for those attending to understand it it..

With the parties' consent, the Trial Court may authorize the reading or reproduction of a portion or summary of the kinds of evidence referred to in Articles 352, 363 and 364, when to do so would be appropriate and would ensure understanding of their content. All these [forms of evidence] may be shown to the defendant, the experts or the witnesses during their testimony to support their testimony.

Article 367. [Information derived from] a suspension of pretrial proceedings, reparation agreements and plea agreement proceedings.

At the oral trial, no [party] shall refer to, read or introduce as evidence any

prior material that has as its origin the proposal, discussion, acceptance, source, rejection or revocation of a pretrial diversion agreement, a reparation agreement or a plea agreement.

Article 368. Subsequent evidence.

The Trial Court may order the admission of evidence of later-discovered facts, or facts that were not offered at the proper time by one of the parties, when [the party] can show that it hadn't previously known of the facts' existence.

At the time the evidence is offered, if a controversy arises solely regarding its veracity, authenticity or integrity, the Trial Court may authorize introduction of new evidence intended to clarify these points, even if they were not offered at the proper time, so long as it was not possible to predict the need for it.

In both cases, the evidence shall be offered before the trial is closed, and the Judge shall preserve the opportunity for the opposing party to make a further offer of evidence, to prepare [further] cross examination of witnesses or experts, as appropriate, and to offer evidence that contradicts the supplementary evidence.

Article 369. Establishment of the Trial Court in a location other than the courtroom.

When considered necessary for an adequate understanding of the circumstances of the case, the Trial Court may convene in a location other than the courtroom, while maintaining all the formalities appropriate to the trial.

Article 370. Closing arguments and the close of the trial.

Once the evidence is closed, the Presiding Judge will allow the prosecutor, the auxiliary-accuser and the defense attorney, successively, to make their closing arguments. The Trial Court will take the length of the trial into account in deciding how much time to allow for this purpose.

Following [the closing arguments], [the Judge] will allow the prosecutor and the defense attorney an opportunity for a reply and surreply. The reply may only refer to that which was stated by the defense attorney in his/her closing argument, and the surreply to that expressed by the prosecutor or auxiliary-accuser in the reply.

Lastly, he/she will provide the defendant an opportunity to speak in order that he/she may say what he/she considers appropriate. After that, the trial will be declared closed.

SECTION 11
DELIBERATION AND JUDGMENT

Article 371. Deliberation.

Immediately after closing the trial, the members of the Trial Court who have attended will proceed to deliberate privately, in a continuous and sequestered manner, until they issue their respective judgment.

Article 372. Judgment of acquittal or conviction.

Once their deliberations are concluded, the Trial Court will reconvene in the courtroom, after having orally called all the parties together; only the part of the judgment regarding acquittal or conviction of the defendant will be read, and the Judge chosen to deliver [the judgment] will provide a synthesis of the basis in law and fact for their decision.

Article 373. Judgment of acquittal and [lifting of] precautionary measures by the Trial Court.

Once a judgment of acquittal has been communicated to the parties, the Trial Court will immediately order that the precautionary measures that had been imposed on the defendant be lifted and will order that [notice] of this lifting [of precautionary measures] be recorded in every index and other public and police record of which they are a part. The [Trial Court] will also order cancellation of appearance bonds and restoration [to the defendant] of any damages that had been paid over.

Article 374. Judgment of Conviction by the Trial Court

No one may be convicted of any crime except when the Trial Court judging [the defendant] is convinced, beyond all reasonable doubt, that the crime that is the subject of the case really was committed and that the criminal conduct punishable by law was attributable to the defendant.

The Trial Court will base its conviction on the evidence admitted during the oral trial.

A person may not be convicted solely on the basis of his/her own statements.

Article 375. Content of the final judgment.

The final judgment will contain:

I. The name of the Trial Court and the date its order issued;
II. The identity of the victim and the defendant;
III. A brief description of the relevant facts and circumstances that were the subject of the accusation; as applicable, the claimed losses and damages, the restitution claim and the defendant's defenses;
IV. A clear, logical and complete discussion of each of the facts and circumstances that [the Trial Court] accepted as proven and an evaluation of the evidence that were the basis for such conclusions

V. The reasons that are a basis for determining that each one of the acts and its circumstances qualified as a legally recognized crime, as well as the grounds for the verdict;
VI. The ruling convicted or acquitted each of the defendants for each of the crimes of which he/she has been accused; [the ruling] that ordered reparation for damages and that fixed the corresponding amount of indemnization that would be appropriate.
VII. The signatures of the judges who have issued [the final judgment].

Article 376. Drafting of the final judgment.

The final judgment will always be drafted by the member of the Trial Court, designated by it, while the dissent will be drafted by its author. The judgment will indicate the name of the drafter and that of the person drafting the dissent.

Article 377. Period for drafting a judgment of acquittal.

Upon ordering [a judgment of] acquittal, the Trial Court may defer drafting the final judgment for a period of up to five days, which fact will be communicated to the parties.

Article 378. Judgment of conviction.

A judgment of conviction will set forth the penalties imposed and will state whether [the court] will suspend those penalties and apply one of the alternatives to imprisonment or restrictions on liberty provided by law.

A judgment that imposes a prison sentence will fix the period of imprisonment or of preventive detention that the defendant must serve to fulfill it.

A judgment of conviction will also rule on the seizure of instrumentalities or fruits of the crime, or their restitution [to the victim], when that would be appropriate.

When the evidence presented does not allow the amount of damages and losses or corresponding compensation to be established with certainty, the Trial Court may forfeit other property [belonging to the defendant] to compensate for the damages and order that it be liquidated in an ancillary proceeding in execution of the judgment, so long as the damages have been proven as well as the [the defendant's] duty to compensate for them.

Article 379. Consistency of the judgment of conviction and the accusation.

The judgment of conviction [must be consistent with the scope] of the accusation.

Article 380. Setting the date for the hearing on sentencing and compensation of damages.

If the defendant is convicted of the crime contained in the accusation, at that same hearing the court will set the date for the hearing on individualization of the penalty and compensation of damages, which date must be within a period not to exceed five days. During this period, the Trial Court shall draft the part of the judgment pertaining to the existence of the crime and the defendant's responsibility for it.

The parties, with the approval of the Trial Court, may waive the [separate] hearing for individualization of the punishment and compensation of damages. In such case, the Trial Court will call a hearing to read the sentencing order. If, on the day and hour fixed for the sentencing hearing, no one appears at the courtroom, they may dispense with reading the judgment and sentencing order.

Article 381. Summons to the sentencing hearing.

Notice will be given to the victim and the offended party of the date for the hearing on individualization of punishment and compensation for damages, as applicable, and [the court] will summons whoever should appear for it.

Article 382. Appearance of the parties at the [sentencing] hearing.

The Prosecutor, the defendant and defense attorney, and the victim or offended party may appear themselves or through a representative or a person with power of attorney. Nevertheless, the hearing will not be stayed if they fail to appear personally or through their legal representatives.

Article 383. Opening statements.

Once the hearing is opened, the Prosecutor will be given the first opportunity to speak in order that he/she may make known the matters he/she considers relevant to the individualization of the punishment that he/she wants imposed, the damage caused by the crime and [the amount of the loss].

Next, the Trial Court will give the floor to the victim or the offended party in order that they may point out what they consider relevant to these matters. After that, the defense will set forth the arguments that provide the legal basis for their requests [regarding the punishment to be imposed] and whatever they believe important to point out with respect to the statements by the Prosecutor and victim or offended party.

Article 384. Introduction of evidence.

After the opening statements of the parties, [the hearing] will proceed to the submission of properly admitted evidence, beginning with that of the Prosecutor, then that of the victim or offended party, and concluding with that of the defense. The rules pertaining to oral trials will be applicable to submission of evidence [at the sentencing hearing].

Article 385. Final arguments.

Once the evidence has been submitted, the parties will make final arguments. After deliberating briefly, the Trial Court will proceed to announce its decision with respect to the punishment to be imposed on the defendant and the existence of damage caused to the victim or offended party and the reparations due. At the same time, [the court] will fix the penalties and will rule on the eventual application of any of the alternatives to imprisonment or conditional discharge and, if applicable, will direct how reparation should be made for damages. Thereafter, the Trial Court will proceed to read the entire judgment of conviction.

TITLE NINE
SPECIAL PROCEDURES

CHAPTER I
GENERAL PRINCIPLE

Article 386. General principle.

In those matters subject to special procedures, the procedures established in this Title as to each of them will apply.

With regard to those that are not provided for, the ordinary rules of procedure will apply, so long as they are not in conflict with the [special procedures].

CHAPTER II
PLEA AGREEMENT PROCEEDINGS

Article 387. Origin.

[A request for] plea agreement proceedings in cases in which the defendant has admitted the crime attributed to him/her in the written accusation, consents to the application of this procedure and, if applicable, the auxiliary-accuser does not have a legal basis for objection, may only be transmitted [to the Court] at the request of the Prosecutor.

The existence of co-defendants does not prevent [the Court] from applying these rules to one of them. The victim or offended party whose place of residence is known will be heard, even if he/she has not become an auxiliary-accuser, but his/her viewpoint will not be binding. The failure of the victim or offended party to appear, without just cause, will not prevent [the court] from ruling on the opening of the plea proceedings and, as appropriate, issuing the corresponding judgment.

Article 388. Timing.

The Prosecutor may present the accusation and request the opening of a plea agreement proceeding in the same hearing at which [the court] makes a finding of probable cause to hold the defendant for prosecution. If the Preliminary Judge rejects the request to open a plea agreement proceeding, the Prosecutor may withdraw the accusation and ask the judge to set a period of time for closing the investigation.

The prosecutor may express his/her desire to apply the plea agreement procedure at the time he/she presents the written accusation or verbally at the intermediate hearing. If at the latter, the Prosecutor may modify the accusation to conform to the punishment required [by the plea agreement]. The Prosecutor may ask for a lesser penalty of up to one-third of the minimum penalty provided for crime with which [the defendant] is charged.

Article 389. Verification by the Judge.

Before ruling on the request of the Prosecutor, the Judge will verify that the defendant:

I. Has agreed to the plea agreement proceedings freely, voluntarily and knowingly and with the assistance of his/her defense attorney;
II. Knows his/her right to insist on an oral trial and is voluntarily waiving that right and agrees to be judged on the facts gathered during the investigation;
III. Understands the terms of the plea agreement and the consequences that it has for him; and
IV. Accepts the material facts of the accusation freely, unequivocally and spontaneously.

Article 390. Decision on the request for a plea agreement proceeding.

The judge will accept the Prosecutor's request when he/she believes that the prerequisites have been complied with.

When he/she does not believe that they have been, or when he/she believes that the victim or offended party's objection [to the plea agreement] is well-founded, the Judge will reject the request for a plea agreement proceeding and order the opening of the oral trial. In that case, the earlier requirement regarding the [proposed] penalty does not bind the Prosecutor during the trial, and the agreement of the defendant to the facts, as well as the modification of the accusation for the possible plea agreement proceeding will be treated as though they had not occurred. At the same time, the Trial Court will order that all prior information relating to the proposal, discussion and decision on the request to proceed with a plea agreement proceeding be eliminated from the record.

Article 391. **Procedural steps for the plea agreement proceeding**.

Once he/she has agreed to the plea agreement proceeding, the Judge will open the hearing and give the floor to the Prosecutor, who will make a presentation summarizing the accusation and the activities and proceedings of the investigation on which it is based. After that, [the court] will allow the others to speak. In any event, the final word will always be given to the defendant.

Article 392. Judgment in the plea agreement proceeding.

At the end of the arguments, in the same hearing, the Judge will issue his/her judgment of conviction or acquittal and will read the judgment publicly within a period of forty-eight hours. If [the judgment] is for conviction, [the court] may not impose a punishment greater than that requested by the Prosecutor.

In no case may the plea agreement proceeding prevent [the defendant from receiving] one of the alternative dispositions provided by law, if it is applicable.

CHAPTER II
PROCEDURE FOR THOSE WHO CANNOT BE HELD CRIMINALLY RESPONSIBLE (*Procedimiento para inimputables*)

Article 393. Procedure for the exclusive application of security measures to those who cannot be held criminally responsible.

When it appears that the probable perpetrator of a crime falls within one of the categories referred to in Article 57 *Bis* of the Criminal Code of the State [of Chihuahua], the Judge, on his/her own authority or at the request of one of the parties, will order an expert examination to make a determination on that issue. The Judge will order a suspension of proceedings until the required report is sent [to the court], without affecting the continuation of [the proceedings] with respect to the co-defendants in the case, if there are any.

Article 394. Opening of the special proceeding.

Upon establishing that the defendant cannot be held criminally responsible, the regular proceeding will be closed and [the court] will open the special proceeding, with the sole objective of deciding the merits of the request for security measures.

If the person who cannot be held criminally responsible has a legal representative or guardian, as applicable, that person will represent him/her in all stages of the proceedings. If that is not the case, the Judge will proceed to designate a provisional [representative], who will represent him/her. The [appointment] will not affect the right of the person to be represented by a defense attorney and he/she may be ordered to personally appear when it is considered necessary.

Article 395. Procedural steps.

The special procedure will be conducted according to the following rules:

I. In all cases, in securing [the defendant's] material defenses, the same rules will be applied as those used in an ordinary proceeding, except for the rules relating to the presence of the defendant at trial;

II. The evidence presented at the legal proceeding will only be evaluated to establish the *corpus delecti* and the participation of the person who cannot be held criminally responsible, omitting any blame regarding his/her conduct;

III. The court will issue a final judgment of acquittal if [the court] does not verify that the crime occurred or does not verify the participation of the person who can't be be held criminally responsible; and

IV. If the court finds that the act constituted a violation of law and that the person who cannot be held criminally responsible participated in it, and if he/she believes it necessary to impose some security measure, the court will open the proceeding to determine what [measures] would be appropriate, as well as the length of time for which [they should be imposed], which in no case may be greater than that which could have been imposed on the subject if the case had gone to trial.

Article 396. Conflict [of proceedings]

The special proceeding may never be carried on at the same time as an ordinary proceeding regarding the same person, and the plea agreement procedure will not be applicable.

Article 397. Provisional commitment of the defendant.

During the proceedings and at the request of one of the parties, the Trial Court may order the provisional commitment of the person who cannot be held criminally responsible to a state institution, when the requirements set forth in Articles 170 and 175 are met, and the psychiatric report with respect to the defendant indicates that he/she suffers from a serious alteration or insufficiency of his/her mental faculties that make one fear that he/she could endanger himself or others.

To the extent possible, the Court will apply the rules contained in the Title regarding precautionary measures.

CHAPTER IV
INDIGENOUS TOWNS AND COMMUNITIES

Article 398. Indigenous communities.

In the case of crimes committed by members of indigenous communities or towns, to the detriment of their legal interests or those of their members, they may be judged by their traditional authorities, in conformity with their own procedures and customs, so long as the victim or offended person agrees. In this circumstance, upon receiving the request of any of the parties, the Judge with jurisdiction of the case will declare the criminal proceeding null and void.

The crimes of intentional homicide, kidnapping, rape, family violence, corruption of minors, crimes against full protection of the disabled, and conspiracy crimes are excepted from the provision in the prior paragraph.

TITLE TEN
LEGAL REMEDIES (*RECURSOS*)[36]

CHAPTER I
GENERAL PRINCIPLES

Article 399. General rules.

Judicial decisions will be appealed only by the means and in the cases expressly established [by law.]

The right to appeal rests solely with the person who is expressly so authorized and who could be adversely affected by the decision.

In a criminal case, only the following legal remedies will be permitted, depending on the specific case:

I. Reconsideration;
II. Appeal;
III. Nullification; and
IV. Review.

Article 400. Conditions for filing.

Requests for legal remedies will be filed at the time and in the form prescribed by this Code and will contain a specific reference by the losing party to the decision being contested.

Article 401. Injustice.

The parties may only appeal judicial decisions that could cause them an injustice, [and only] if they have not contributed to causing it. The appeal shall be sustained as a means of calling attention to the error [in the decision] that caused

[36] To avoid confusion, in this translation, *Recursso*, which is often translated as "appeals," is more appropriately translated as "legal remedies," as "*recursos*" comprehends a number of kinds of legal challenges to a decision, at different stages and levels, including the recourse of an appeal to a higher Court of Appeals when such appeal is authorized.

the injustice.

Even if he/she has contributed to causing the error, a defendant may challenge a judicial decision in those cases in which [the defendant's] fundamental rights, as provided for by the federal Constitution and the international treaties, ratified by Mexico, are injured.

Article 402. Request for legal remedy by the victim or offended party.

The victim or the offended party, even if he/she has not become an auxiliary-accuser, may appeal decisions regarding the reparation of damages in those cases authorized by this Code. When the decision occurs during the trial, he/she may only contest [the decision] if he/she has participated in it..

Article 403. Applicability of writs of error.

The basis for a writ of error will exist if, in addition to its being grounded in law, the modification or revocation of the contested decision does not involve a violation of the rights of the prevailing party.

Article 404. Legal remedies at the instance of the Prosecutor.

The victim or the offended party, even if he/she has not officially qualified as a party, may present the Prosecutor with a request, grounded in law, asking that [the Prosecutor] seek those legal remedies that are pertinent within the time period provided by law.

When the Prosecutor does not file the objection, he/she must explain the reasons briefly, in writing, to the person who requested it.

Article 405. Scope of the legal remedy.

When there are co-defendants, the request for legal remedy filed by one of them will benefit the rest also, unless it is based exclusively on grounds personal to [the person who filed it].

Article 406. Effect on suspension.

The filing of a request for a legal remedy will not suspend the execution of the decision, except when the law provides otherwise.

Article 407. Waiver.

The Prosecutor may waive his/her legal remedies, by an agreement, grounded in law and fact.

The parties may withdraw requests for legal remedies filed by them or their defense attorneys, without affecting those of other petitioners. In order to waive a legal remedy, the defense attorney must have the express authorization of the defendant.

Article 408. Jurisdiction.

The Court of Appeals with jurisdiction of an appeal may only rule on the requests made by the appellants, and is prohibited from extending the effect of its decision to questions that were not submitted by [appellants] or that were beyond the limits of [the relief] requested, unless [the Court] is dealing with an act that is violative of fundamental rights**.**

Article 409. Prohibition of alteration [of a decision] to the petitioner's detriment.

A decision that is contested may not be altered to the detriment of the petitioner.

Article 410. Correction [of errors].

Errors of law that are the basis for a contested judgment or a decision that has not affected the outcome of the case, such as errors in the form of the name or the calculation of the punishment, will not nullify the decision, but they will be corrected when they are noticed or pointed out by one of the parties or by the court, acting on its own authority.

CHAPTER II
LEGAL REMEDY OF RECONSIDERATION

Article 411. Admissibility

A motion for reconsideration will only be allowed against decisions that are made during the proceeding, without [legal or factual] support, in order that the same Judge who made [the decisions] may examine the question again and issue the appropriate decision.

Article 412. Administrative processing.

A motion for reconsideration of decisions announced during oral hearings should be made as soon as the rulings are made and only will be admissible if the [points made] have not been previously argued. The motion will be made orally and immediately, and in the same manner, the court will state the error for which reversal is granted.

[A motion for] reconsideration of decisions made outside the hearing will be submitted, in writing, within three days after notice of the contested decision and shall contain the reasons why reversal is requested. The Judge or Trial Court will rule without further question (*de plano*), but may listen to the other parties if the Court concludes that the complexity of the issue merits it.

Article 413. Reservation [of rights].

Filing of [a motion to reconsider] preserves the right of review in an appeal or request for nullification.

CHAPTER III
LEGAL REMEDY OF APPEAL

Article 414. Decisions subject to appeal.

The following decisions of the Preliminary Judge will be subject to appeal:

I. Those [decisions] that put an end to the proceeding, make the prosecution impossible, or stay [the case] for more than thirty days;
II. Those [decisions] issued regarding precautionary measures;
III. Those [decisions] that grant, refuse or revoke a stay of proceedings and pretrial diversion;
IV. The final judgment issued in a plea agreement proceeding.
V. The order that rules on probable cause to hold the defenant for prosecution;
VI. The decision not to issue an arrest warrant;
VII. The [decisions] that exclude evidence, which are issued up until the opening of the oral trial;
VIII. [The decision] denying a request to hold a plea agreement proceeding;
IX. Those [decisions] that deny the possibility of a reparation agreement; and
X. Other [decisions] as provided in this Code.

Article 415. Filing [of an appeal].

An appeal will be submitted, in writing, within a period of three days, before the same Judge who issued the decision.

The written submission in which the appeal is made should specify the procedural errors that [the appellant] believes were committed prior to issuance of the decision, or, as applicable, during the hearing in which [the decision] was issued

When the Court of Appeals with jurisdiction [to hear the appeal] has its seat in a different location, the parties should provide a new address or means for them to receive notices, when necessary, in accord with the provisions of Article 51.

Article 416. Summons [of the parties] and elevation [to the Court of Appeals].

Once the appeal is filed, the Judge shall direct the parties to appear at the Court of Appeals (*Tribunal de alzada*) and will send [the Court of Appeals] the decision and a certified copy of all the relevant materials in the record.

Article 417. Administrative processing.

When the decision appealed from and the [court record] are received, the Court of Appeals will decide without further investigation whether to admit the appeal and will call a hearing within the next ten days to decide the question appealed.

As an exception, on its own authority or at the request of one of the parties, [the Court of Appeals] may request other copies or the original proceedings. The latter [request] shall not mean that the proceeding is halted or stayed.

Article 418. Conduct of the hearing.

The hearing will be conducted with the parties who appear, who will be given the opportunity to speak.

The defendant will be represented by his/her defense attorney, but he/she may attend the hearing; if he/she does so, he/she will be given the final word.

In the hearing, the court may question the appellants on issues raised in the appeal.

When the argument is ended, the Court of Appeals will announce its decision immediately or, if that isn't possible, within a period of three days after the hearing, on a date and at an hour that will be made known to the participants. The Court of Appeals may reverse, modify or affirm the decision appealed from.

CHAPTER IV
LEGAL REMEDY OF NULLIFICATION

Article 419. Legal remedy of nullification.

The purpose of the remedy of nullification is to invalidate the trial, or the judgment, or the order of dismissal issued in that proceeding, when the essential procedural rules have been broken or there has been a legal violation in reaching the decisions mentioned.

Article 420. Filing a request for nullification

A motion for nullification will be filed, in writing, before the Trial Court that had jurisdiction of the oral trial within the ten days after notice of the contested decision; [in the request, the proponent], in writing, shall clearly point out the procedures violated and the reasons for the resulting injustice.

Article 421. Effect of filing a request for nullification.

The filing of a motion for nullification stays the effects of the contested judgment of conviction.

Once the motion of nullification is filed, [the appellant] may not raise any new reasons for nullification. Nevertheless, the Tribunal, on its own authority, may

exercise its power on behalf of the defendant to repair violations of his/her fundamental rights.

Article 422. Inadmissibility [of the request for nullification].

The Court of Nullification will rule that the motion is inadmissible when:

I. It has been filed beyond the time limit [provided by law];
II. It has been brought against a decision that cannot be contested through nullification proceedings;
III. It is submitted by a person not legally entitled to do so; or
IV. The written submission lacks the legal foundation of injury or specific requests [for relief].

Article 423. Procedural reasons for nullification.

The trial and final judgment will provide a legal basis for nullification when:

I. In carrying out the trial, fundamental rights guaranteed by the federal or State Constitution or by international treaties, ratified by Mexico and in force, were violated;
II. The final judgment was issued by a Trial Court that did not have jurisdiction or that did not guarantee impartiality, as required by law;
III. The trial took place in the absence of one of the parties whose continued presence is required by law;
IV. The right of defense or right to cross examination was violated; [or]
V. The requirements established by law to [have the trial] open to the public, oral and in one continuous proceeding were violated, but only if the rights of the parties were harmed.

In these cases, the Court of Nullification will order a new trial, sending the order for a new trial to the Trial Court with jurisdiction, [but to be] composed of different judges than those who participated in the nullified trial.

Article 424. Reasons for nullification of the final judgment.

The final judgment will provide a legal basis for nullification when:

I. With respect to a central issue, [the judgment] violates a fundamental right or a guarantee of legality;
II. It lacks a basis in law or fact or does not contain a ruling on reparation of damages;
III. It has taken illegal evidence into account to an extent that it affects the [outcome of the] decision.
IV. It has not followed the principle that the judgment must be consistent with the accusation;
V. It has been issued in conflict with another, earlier, final and conclusive criminal judgment [*res judicata*];

VI. In evaluating the evidence, the rules [for application of] sound criticism, experience and logic has not been observed or the evidence has been falsified;
VII. The criminal case is terminated.

In these cases, the Court of Nullification will vacate the judgment and, in accord with the particular circumstances of the case, will decide whether it will directly announce the decision replacing it or whether it will remand the case for trial, in accord with the provisions of the preceding Article.

Article 425. Non-essential defects.

Errors in the judgment appealed from that do not affect a dispositive part of the judgment will not be nullified, without prejudice to the Court of Nullification correcting those [errors] of which they become aware while they have the request under consideration.

Article 426. Procedure

In the course of proceedings on the motion for nullification, the procedure prescribed for appeals will be followed, unless otherwise provided.

Article 427. Evidence.

Evidence may be offered when the appeal is based on a defect in the procedure and discusses the form in which an act was carried out, in contraposition to that noted in trial record or in the judgment. If the court believes [evidence] is necessary, it may order it on its own authority.

Article 428. Judgment of nullification.

In its judgment, the Court of Nullification shall set forth the basis in law and fact that support its decision and give an opinion on the contested questions, unless it is granting the petition for nullification based on another reason that would be sufficient to nullify the judgment.

Article 429. Lack of legal grounds for the remedy.

The decision issued in response to a motion for nullification will not be subject to any appeal, without prejudice to the review of the final judgment of conviction, as provided by this Code.

There also will be no appeal of a final judgment issued in a new trial carried out as a consequence of the decision that was issued in response to the motion for nullification. Nevertheless, if there was a judgment of conviction [in the new trial], and there was a judgment of acquittal in the one that was nullified, a motion for nullification made on behalf of the defendant will proceed, in accord with the general rules.

CHAPTER V
LEGAL REMEDY OF REVIEW

Article 430. Origin.

Review of the final judgment may proceed at any time, and only in favor of the defendant, when:

I. The contested judgment is based on evidence the falsity of which has been decided in another final judgment, or [its falsity] is obvious, even though there has been no later proceeding;
II. The judgment of conviction has been issued as the consequence of bribery, violence or one of the possibilities referred to in the Criminal Code relating to crimes of obstruction of justice or others suggesting fraudulent conduct, the existence of which has been ruled on in a later final decision.
III. Following the judgment, new facts and evidence have arisen, which alone or in combination with those already considered at trial, make it clear that the crime did not occur or that the defendant did not commit it or that the act committed is not punishable or that it is appropriate to apply a more favorable rule; or
IV. It is appropriate to apply a milder law or amnesty, or there is a change in the law that benefits the convicted person.

Article 431. Legitimation

This remedy may be submitted by:

I. The convicted person;
II. The spouse, mistress or male lover, blood relatives to the third degree or by marriage to the second degree, and a judicially recognized heir, if the defendant has died; and
III. The Prosecutor.

Article 432. Submission.

The remedy of review will be submitted in writing before the State Supreme Court. It shall contain specific reference to the grounds in fact on which it is based and the applicable legal provisions. The evidence will be included with the written request and will be accompanied by documentary support.

Article 433. Procedure.

To the extent they are applicable, the procedures for the remedy of review will be guided by the rules established for an appeal. The competent Panel of

Magistrates [of the Supreme Court][37] may rule on all the preliminary investigative questions and proceedings that it believes useful and delegate their execution to its members. On its own authority, it may produce [additional] evidence for the hearing.

Article 434. Nullification.

The competent Panel of Magistrates [of the Supreme Court] may nullify the judgment, when it results in an acquittal.

Article 435. Retrial.

When the [Court] nullifies the judgment appealed from, it will order return of the amount paid as a criminal fine and the seized property or its value, if that is possible, unless the nullification is based on [the circumstances] set out in sub-section IV of Article 430.

Article 436. Reduction of penalty.

If a later law has reduced the penalty applicable to the crime that was imposed in the judgment appealed from, the competent Court will issue a new decision imposing the new penalties on the sentenced defendant.

Article 437. Rejection.

Denial of the request for review will not prevent the submission of a new request, based on for distinct legal reasons.

T R A N S I T I O N [TO THE NEW CODE]

First Article. Effective date. This Code will become effective on January 1, 2007, in the manner specified in what follows.

Second Article. Application. The provisions [of this Code] will apply to crimes that occur in the District of Morelos on the date stated [January 1, 2007], in the District of Bravos at midnight on July 1, 2007, and with respect to crimes occurring in the rest of the State, at midnight on January 1, 2008.

Third Article. Abrogation. The Code of Criminal Procedure promulgated on February 18, 1987, will remain in effect as to those proceedings initiated before the effective date for application of the new Code, and will be abrogated at the point that those proceedings are completed.

[37] Preliminary matters before the Supreme Court may be ruled on by a panel, rather than the entire Court.

Fourth Article. Implied repeal of inconsistent provisions. The provisions of State law that are inconsistent with the provisions of this Code are repealed in accordance with the provision set out in the preceding text.

Fifth Article. Permanent and continuing crimes. Criminal procedure regarding those crimes that are permanent or continuing, and that were initiated in the period governed by the above-mentioned Code of Criminal Procedure of 1987, and which continue under the current law will be governed by the [Code of Criminal Procedure of 1987].

Sixth Article. Prohibition of joinder of criminal cases. [The joinder of proceedings brought under the 1987 Code and the current Code is prohibited.]

Seventh Article. Retroactive effect. Whenever it is appropriate during the course of proceedings under the prior Code, the provisions of the current Code shall be applied that relate to: A) indemnization of the defendant; B) the power to not initiate an investigation, to temporarily archive a case and to enter a plea agreement for a reduced sentence (*los criterios de oportunidad*), except in cases of organized crime; C) reparation agreements and suspension of criminal evidentiary proceedings for pretrial diversion; D) plea agreement proceedings; and E) the legal remedy of a request for review.

For purposes of this Article, the powers of this Code given to the Preliminary Judge shall be exercised by the judge of first instance in the mixed or criminal court, or the corresponding lesser judge. Reparation agreements may be entered into until the time of the final hearing referred to in Article 360 of the Code of Criminal Procedure of 1987. Pre-trial diversion may be ordered until the closing of the period of instruction,[38] in accord with Article 92 of the Code of Criminal

[38] *El periodo de instrucción* in the Code of Criminal Procedure of 1987 (*Article 90 et seq*.) is the period of investigation that follows the "preinstruction" period and a finding of probable cause. Evidence concerning the issues of fact in a criminal case -- the crime, the defendant and victim -- is submitted to the judge (or investigative actions are ordered or undertaken by him/her). The evidence is then considered by him/her -- sort of a prolonged trial, the time limits of which are set by law according to the nature of the penalty for the crime. Before the *periodo de instrucción* is closed , the judge will issue the equivalent of a draft order or preliminary opinion on issues of fact and matters he/she believes still need to be resolved and allow the parties to address them. When the *periodo de instruccion* is closed, the ministerio publico submits what would be equivalent of a formal charge and closing arguments in support, in whichj he/she discusses the facts and law and punsishment requested (*las conclusiones*)–in writing. This is followed by *conclusiones* from the defense. There is then a hearing with the parties, followed, in due time, by the court's final judgment.

Proceedings of 1987. Plea agreement proceedings may be conducted in accord with the provisions of Article 554 of the Code of Criminal Procedure of 1987. [A plea agreement proceeding] may be requested until just before the evidence offered by the parties is presented. The criminal acts that the defendant shall admit to are those in the court order of imprisonment or submission to process (*el auto de formal prisión o de sujección a proceso*).

*****[39]

[39] The articles that follow are not relevant to the purposes of this translation and are omitted. They reference the Articles in the old law that are affected by the new, changes to the Organic Law on Powers of the Judiciary of the State of Chihuahua and new laws on judicial administration.