

ENGLISH

INFORMATION
GUIDE ON

THE CRIMINAL PROCESS

FOR VICTIMS
OF GENDER
VIOLENCE



Euskadi, auzolana, bien común

EUSKO JAURLARITZA



GOBIERNO VASCO



EMAKUNDE
EMAKUMEAREN ELIBAL ENAKUNDEA
INSTITUTO VASCO DE LA MUJER

**GIPUZKOAKO GENERO INDARKERIAREN
BATZORDE PROBINTZIALA**
COMISIÓN PROVINCIAL
DE VIOLENCIA DE GÉNERO DE GIPUZKOA

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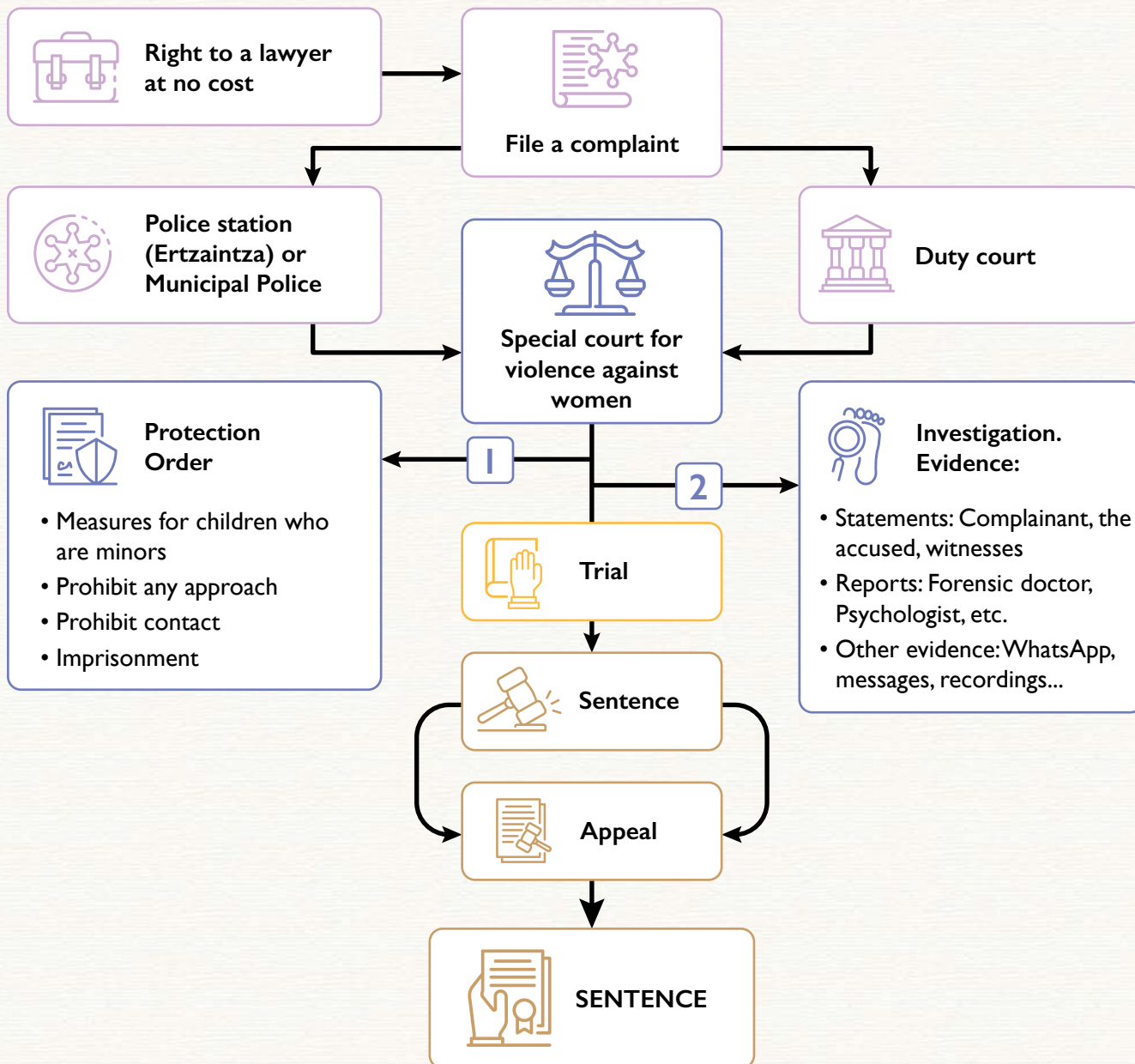


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FILE A COMPLAINT

- You can file the complaint:
 - At any police station, the Ertzaintza (The Basque Police Force) or the local police from your municipality.
 - At the courthouse.
- You have the right to speak to a lawyer before you file your complaint.
- This lawyer will not cost you anything. They will inform you and advise you while you file the complaint and during the judicial process that will start at the courthouse.
- It is important that you explain EVERYTHING that has happened to you, not just the latest physical, psychological (insults, threats, humiliations, etc.) or sexual assault that you have experienced.
- It can be of help to bring with you a written version of the incident or incidents you wish to file a complaint about.
- Do not forget to explain if your children have also been victims of violence or if they were present or heard what happened to you.
- It is important to mention if there were any witnesses to the incident or incidents.
- You may request that your new address, telephone number and other information is kept strictly confidential if the accused is not aware of them.
- When you file the complaint, you can apply for a protection order not only for yourself but also for your children and other relatives.
- You have the right to request a translator for sign language as well as other languages.

Read the complaint before signing it to ensure that it contains everything that you have explained. If you have any questions, make sure you ask your lawyer.

THE JUDICIAL PROCESS



WHAT HAPPENS AFTER THE COMPLAINT IS FILED?

- The police will tell you the day and time that you must go to the courthouse and make your statement to the judge.
- **If you have applied for a Protection Order**, you must make a statement at the courthouse within a maximum time of 3 days, however, usually you have to go the following day to file the complaint.
- **If you have not requested a Protection Order** and the police have not given you an appointment for attending the courthouse, you must wait until a courthouse official contacts you.
- You may be accompanied by anybody you wish.
- The lawyer you dealt with at the police station will also be with you at the courthouse. If you did not have a lawyer with you when you filed the complaint, request the presence of one at the courthouse.
- You have the right to request that there is no contact inside the courthouse with the accused.
- You have the right to request that the decisions adopted by the judge (complaint dismissed, sentence, imprisonment of the accused, release from prison....) is communicated to you by email or to your address.
- You have the right to request for safety reasons that the lock is changed in your home. This lock change if approved by the judge will have no cost for you.

You may be accompanied by the person you wish.



WHAT WILL HAPPEN AT THE COURTHOUSE?

- You will be asked about the facts of the incident.
- In certain circumstances, you can refuse to make a statement to the judge. Your lawyer will inform you about your right to not make a statement.
- If you do not make a statement, it is possible that the complaint will not go any further, however, depending on the facts of the incident that you have filed a complaint about and other circumstances (injuries, witnesses, etc...), even if you do not make a statement, the judge may decide to continue the investigation and that the case goes to trial.
- If you change your mind, you can go to the courthouse and make clear your wish to make a statement.
- The accused will **NEVER** be present while you make a statement.
- The only ones present when you make your statement are:
 - The judge
 - The prosecutor
 - Your lawyer
 - The accused's lawyer
- You can let it be known if there have been witnesses to what occurred and you can submit any evidence that you may have (telephone messages, photographs, recordings).
- If you are injured and you consent to being examined, a forensic doctor will carry out an examination.
- After you have made your statement, the judge will question the accused. **You will not be present** while a statement is being taken from the accused.



This is where you will make your statement:



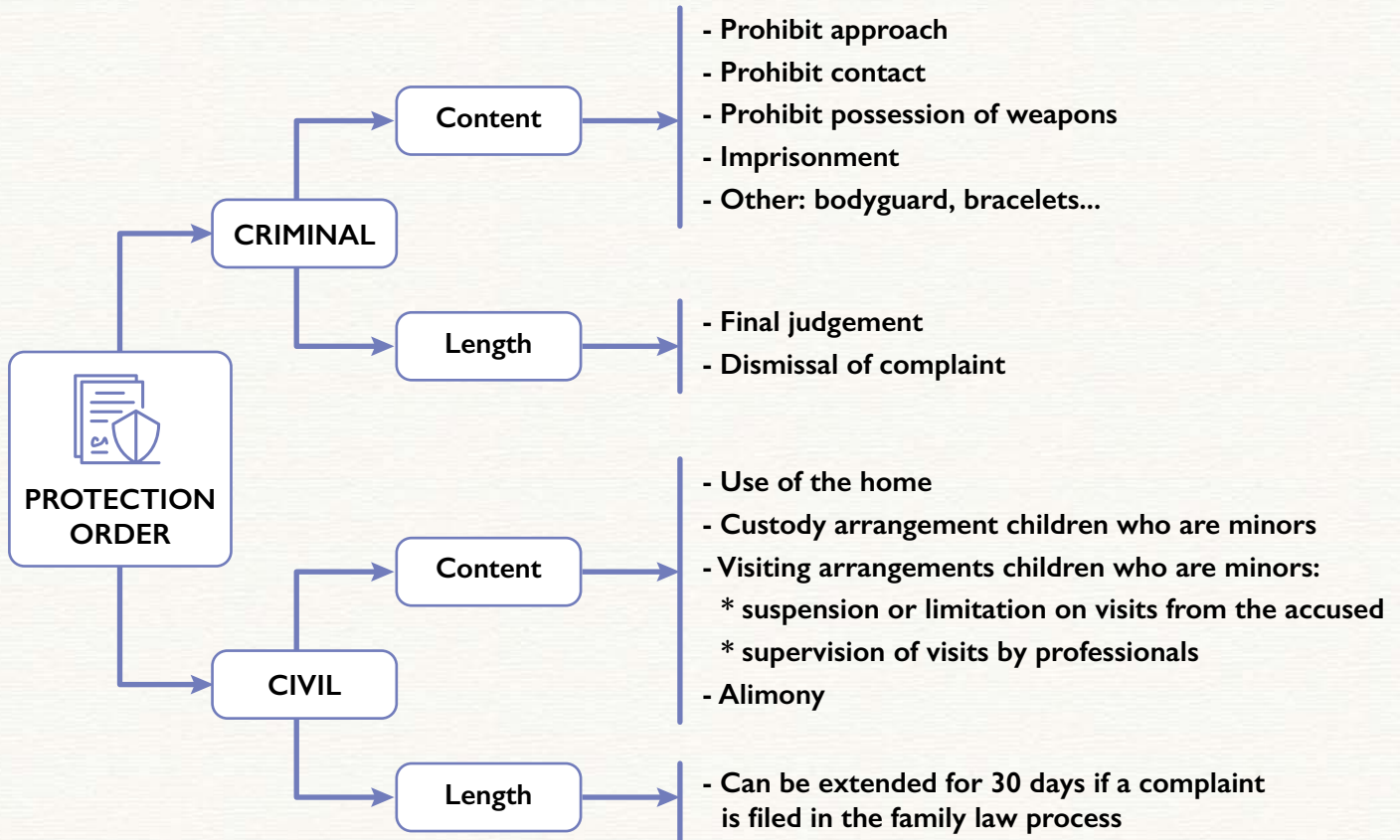
- Having listened to you and listened to the accused, it will be the judge who will decide if a Protection Order filed for by you or by the Public Prosecutor's Office will be granted.
- Not being granted a Protection Order does not mean that you have not been believed or that the complaint will not be investigated further.

Remember that the accused is never present while you make your statement.



WHAT IS A PROTECTION ORDER?

- It is a judicial order that **guarantees your safety and that of your children and can include dependents who you are responsible for.** It can only be granted by a judge.
- You can file for a Protection Order when you file your complaint at the police station or at the courthouse when you make your statement.
- Furthermore, the Public Prosecutor's Office or the judge can grant it to you even if it has not been filed for.





- In the Protection Order, the judge can:
 - Prohibit the person that you have filed a complaint against from approaching you, your children or other family members.
 - Prohibit the person that you have filed a complaint against from approaching you at work, at your home or places that you, your children or other relatives usually go to.
 - Prohibit the person that you have filed a complaint against to contact you or your children or other relatives (by telephone, email, WhatsApp messages..).
 - Order the accused to be remanded in custody
 - Seize firearms if accused is in possession
 - Order that the Ertzaintza protects you by providing a bodyguard or other security measures if deemed necessary according to the level of risk you are exposed to.
 - Order if deemed necessary that the Ertzaintza accompanies you to your home so that you can pick up your belongings.
 - Order that the Ertzaintza accompanies the person you have filed a complaint against to your home to pick up their belonging.
 - Authorise you to change the lock of your home.
 - Order other **measures for the safety of your children** (grant you the use of your home, suspend or limit the accused's visiting arrangements with your children, stipulate that these visits are supervised by professionals, alimony ...).
- You must contact the police, if the accused does not comply with the Protection Order.

***Remember: the protection order guarantees
your safety and that of your children.***



THE TRIAL

- If the person you have filed a complaint against has **DENIED THAT THE INCIDENT OR INCIDENTS** took place, the judge will further investigate to verify what you have denounced. Further evidence can be sought (witness statements, examination by a forensic doctor, investigation of WhatsApp, telephone messages or email, conversation recordings...).

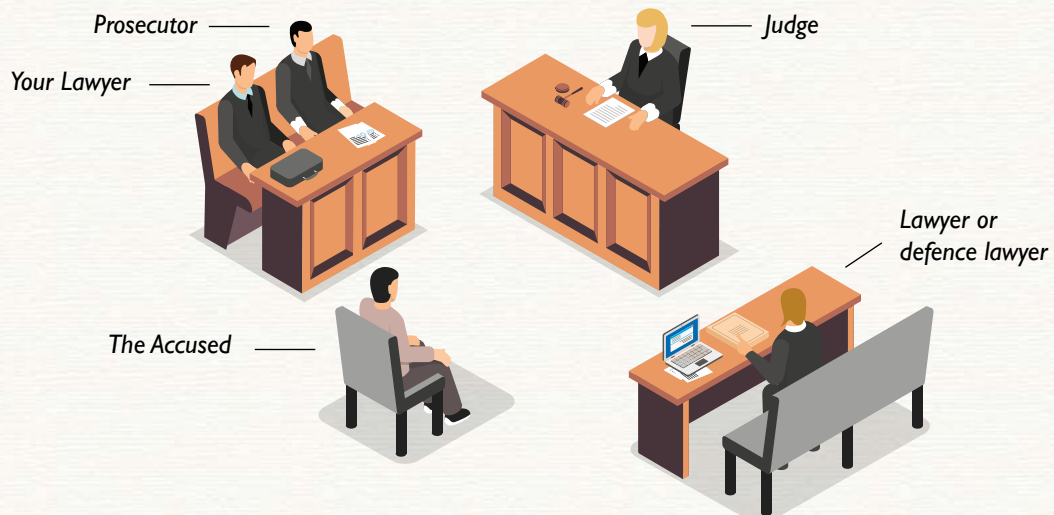


Gather evidence through:

- Statements: complainant, the accused, witnesses
- Reports: Forensic doctor, Psychologist, etc.
- Other evidence: WhatsApp, messages, recordings...

- After a number of months when the investigation has finished the trial will take place.
- In this case, at the trial you will have to make a statement once again.

The trials take place in rooms called courtrooms (“Salas de Vistas”) and these people will participate in the trial:





- You will wait outside this courtroom until you are called to testify.
- The Prosecutor will question you first, then your lawyer and finally the defence lawyer.
- You can request that you do not see the accused while you are answering the questions put to you. You can ask to answer the questions by videoconference.
- In this case the judge will decide if you can make your statement by videoconference (from another room in the courthouse).
- You have the right to be treated with respect by all the professionals participating in the trial.
- It is possible that before the trial takes place, the accused recognises the accusations made by you and requests that an agreement be made with the Public Prosecutor's Office and your lawyer with regard to a conviction.
- In this case, your lawyer should previously inform you about the content of the agreement to find out if you agree.
- If an agreement is reached between the Public Prosecutor's Office, you and the accused, the trial will not take place as the accused has admitted to the facts and the judge will deliver a guilty verdict which will be contained in the agreement.

***Remember: you can ask not to see the accused
while you testify at the trial.***



THE SENTENCE

After the trial takes place and within a number of weeks, the judge will make a ruling that could be a:

- **Guilty verdict:** the sentence will be imposed and also the prohibition to approach you and/or your children, your home and your place of work for a certain length of time. And during this time, this person cannot contact you either.
- **Acquittal:** The person you have filed a complaint against is not convicted. This does not mean that your filed complaint is false but that there was not sufficient evidence.

This sentence can be appealed by:

- The Public Prosecutor's Office
- Your lawyer if you do not agree with the ruling
- The accused's lawyer.

While the appeal is being handled, if there is a Protection Order in your favour, it will continue to apply.

If a prison sentence is imposed, you have the right to be informed as to when the convicted goes to prison, when temporary permits to leave prison are granted and also when definitive release from prison is granted.

Remember: an acquittal is not because the complaint you filed is false but because there was not sufficient evidence to convict the accused.
