

# CRIMINAL PROCEDURE REFORM



MINISTRY OF JUSTICE  
COORDINATION UNIT OF THE CRIMINAL PROCEDURE REFORM



*Chile*





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# GENERAL ANTECEDENTS

of the Criminal Procedure Reform









## THE CRIMINAL PROCEDURE REFORM AS PUBLIC POLICY

Over the past ten years the Chilean government has implemented profound changes designed to modernize the judicial system and bring it in line with the principles of the Rule of Law. This reform process led to the Chilean criminal justice administration system's adoption of international human rights standards through a process that reflected the social, economic, political, and cultural changes that Chilean society has undergone over the past few decades.

Begun at the end of the last century, the Criminal Procedure Reform is an enormous joint and cross-sectional effort that involves commitments on the part of the Executive, Legislative, and Judicial branches as well as a variety of groups that participate in national life, including the private sector. This effort has included the work that has been done in the Executive branch by former President Eduardo Frei, President Ricardo Lagos, former Ministers of Justice Soledad Alvear and José Antonio Gómez, and the current Minister of Justice, Luis Bates.

The new criminal procedure system looks to implement a justice system that resolves the social conflicts in a timely, efficient, transparent, impartial, and accessible manner that is respectful of people's fundamental rights. Strictly speaking, its objective is to install a modern justice

administration system that is capable of conciliating the punitive power of the State and total respect for individual guarantees as efficiently as possible.

To that end, the reform was designed to include the principles of IMPARTIALITY through the separation of the functions of investigation and sentencing; PUBLICITY and ORALITY of all trials and hearings; EFFICIENCY, by establishing a variety of conflict resolution mechanisms; CONCENTRATION of the presentation of all evidence in oral and public trials during which judges present an immediate ruling regarding the defendant's guilt or innocence; and the IMMEDIACY, which is guaranteed through the judge's direct contact with people involved as a requirement for the validity of any procedure.

In keeping with the principles that inspired it, the reform represents a paradigm shift with respect to the inquisitory criminal procedure system, which was installed at the beginning of the 20<sup>th</sup> century (1907). The old system was characterized by the use of written documents and judicial secret and placed the functions of investigation, the laying of charges, and sentencing processes in criminal cases in the hands of a single person: the judge.

The new criminal procedure system introduces institutions that protect individuals' rights and respond to criminal

disputes in a timely manner using procedures that were designed to eliminate negative aspects of the old model such as partiality and slow and inefficient procedures.

Chile's new Criminal Procedure Code establishes an accusatory and adversarial system in which the Public Prosecutor's Office is charged with independently investigating crimes and laying charges. It also led to the creation of the Criminal Public Defender's Office, which is responsible for ensuring that defendants who do not have legal representation receive a professional defense. During the investigation stage, the supervisory judge (*juez de garantía*) ensures that due process is followed and resolves any disputes that arise between the parties. Following the presentation of the prosecution's case (if the matter has not been resolved through procedural reduction mechanisms, as alternative sentences or an abbreviated or simplified procedure, depending on the case), an oral trial is held during which the prosecutor and defense attorney present arguments, evidence, and petitions to a collegiate tribunal made up of three judges who have no prior knowledge of the case that comes before them. Immediately after the audience this judges acquit or convict defendants and lay sentence.









# DESIGN AND IMPLEMENTATION





REFORMA  
PROCESAL  
PENAL

UNA NUEVA  
LEY PARA CHILE



## GRADUAL IMPLEMENTATION, INITIAL CASELOAD OF ZERO, COORDINATION, SECURE FINANCING

The process of installing Chile's new criminal procedure system has been described as one of the most successful experiences in the Latin American context. International experts have observed that this is primarily due to four characteristics of the implementation process: gradual implementation, an initial caseload of zero, secure financing for both human resources and infrastructure, and the creation of an inter-institutional National Coordination Committee.

### ◆ *Coordination*

The responsibility of coordinating the implementation of the new system falls to the **Commission on the Coordination of the Criminal Procedure Reform** (transitory Article 6° of the Law N° 19.665), which is composed of the Minister of Justice (who presides over it), the Supreme Court Chief Justice, the National Prosecutor, and the National Public Defender as well other justice sector officials.

Besides the above-mentioned interinstitutional instance, the Ministry of Justice has a technical specialized unit with a multidisciplinary character, called «**Coordinating Unit of the Criminal Procedure Reform**». This Unit was created by presidential Decree and its mission -across its areas of Infrastructure, Studies, Diffusion and Finance- is to advise the maximum ministerial authorities in the definition and execution of politics and actions of planning, implementation, coordination and familiarization of the citizenry with the various aspects of the new criminal process.

### ◆ *Gradual Implementation*

In order to facilitate the reform's successful implementation, a gradual implementation system was established both in regard to time and geographic area. The process took into account the population and the nature of the criminal activity observed in each of Chile's 13 regions.

The reform's architects decided to establish a 5-stage process that was organized around the following implementation dates and locations:

Dec.16, 2000: Regions IV and IX  
Oct.16, 2001: Regions II, III and VII  
Dec.16, 2002: Regions I, XI and XII  
Dec.16, 2003: Regions V, VIII and X  
June.16, 2005: Metropolitan Region

### ◆ *Secure Financing*

Upon approving and promoting the initiative, the Chilean state took steps to guarantee that the Criminal Procedure Reform would have the funding that it needed. The implementation of the new system is expected to cost over 550 million dollars.

### ◆ *Initial Caseload of Zero*

The new criminal procedure is only applied to crimes committed after the implementation of the new system, which means that the courts that use the old system will continue to handle all crimes committed before that date. This approach was established in order to ensure that the new courts would not inherit any overload or congestion left by the old system.







# NEW JUSTICE SYSTEM actors











## JUDGES

The old criminal justice system featured only 79 criminal court judges. These officials were charged with investigating crimes, laying charges, and presenting sentences in all of the criminal cases that passed through the nation's judicial system. The Criminal Procedure Reform separates these functions, thereby ensuring impartiality and efficiency in justice administration. This effort featured the creation of the figures of supervisory judge (*juez de garantía*) and oral criminal trial court judge. There are 420 of the former and 396 of the latter in the new system.

### SUPERVISORY JUDGE

The role of the supervisory judge is to ensure full respect for the rights of persons involved in a criminal investigations, including victims, witnesses, and defendants.

*These judges:*

- Grant any pre-trial judicial authorizations requested by the public prosecutor's office related to actions that may abridge, restrict or disturb the rights guaranteed under the Constitution.
- Direct hearings during the investigation phase and resolve any disputes that may arise during that process.
- Authorize the release of defendants or determine grounds for remanding defendants to pretrial custody.
- Oversee the hearing that precedes the oral trial.
- Pass sentence during abbreviated procedures, when applicable.
- Hear cases and lay criminal charges according to the simplified procedure, when it has to.
- Ensure that the criminal sentences and security measures that he or she dictates are effectively carried out.

### ORAL CRIMINAL TRIAL COURT JUDGE

Oral criminal trial court judges serve on three-member collegiate courts that are charged with hearing cases and overseeing the exchanges between the parties during the oral trial and then determining the defendant's guilt or innocence.

*These judges:*

- Hear criminal cases and lay sentences according to the Criminal Procedure Code.
- Resolve any disputes that arise during the oral trial
- Acquit or convict defendants and pass final sentences on the basis of the evidence presented during the oral and public trial.
- The oral criminal trial court may hear and pass sentence on cases that fall outside of its jurisdiction in order to ensure that the system works in an efficient manner.







## THE PUBLIC PROSECUTOR'S OFFICE

The Public Prosecutor's Office is an autonomous agency that is independent of all other government branches. This institution, which was established through the Constitutional reform of September 16, 1997, is charged with overseeing the investigation of the facts of criminal cases that determine the existence of a punishable action and establish the defendant's innocence. On the basis of that investigation the Public Prosecutor's Office should exercise public criminal actions by laying charges against those responsible for a crime and following said accusation through a trial in a court of law. It must also take steps to protect crime victims and witnesses.

The Public Prosecutor's Office is composed of the National Prosecutor, regional prosecutors, and assistant prosecutors. There is also a General Council, which includes the National Prosecutor and all of the regional prosecutors and acts as an advisory agency.

*The public prosecutor's office is responsible for:*

- ◆ Representing the community during criminal prosecutions
- ◆ Investigating crimes
- ◆ Overseeing the participation of the police in criminal investigations.
- ◆ Presenting cases before the supervisory judge and later, when necessary, support the criminal public action before the Oral Criminal Trial Court
- ◆ Assisting and protecting victims and witnesses

In order to cover these functions, the Public Prosecutor's Office has 642 prosecutors, which are distributed over 16 regional prosecutor's offices (one in each region and four in the Metropolitan Region), and approximately 3,000 administrative staff members.





**Defensoría**

Sin defensa no hay Justicia



## CRIMINAL PUBLIC DEFENDER'S OFFICE

Created in 2001, the Criminal Public Defender's Office is a decentralized public institution with offices throughout the country. This agency has its own legal identity and resources and answers to the President of the Republic through the Ministry of Justice. The Criminal Defender Office is composed of the National Defender, and the regional and local defenders.

The function of this entity is to provide quality legal services to those charged with or accused of committing a crime, misdemeanor or felony that falls within the competence of a Supervisory Court (*Juzgado de Garantía*), Oral Criminal Trial Court, one of their respective Courts of Appeal or the Supreme Court.

Public defenders are responsible for the following:

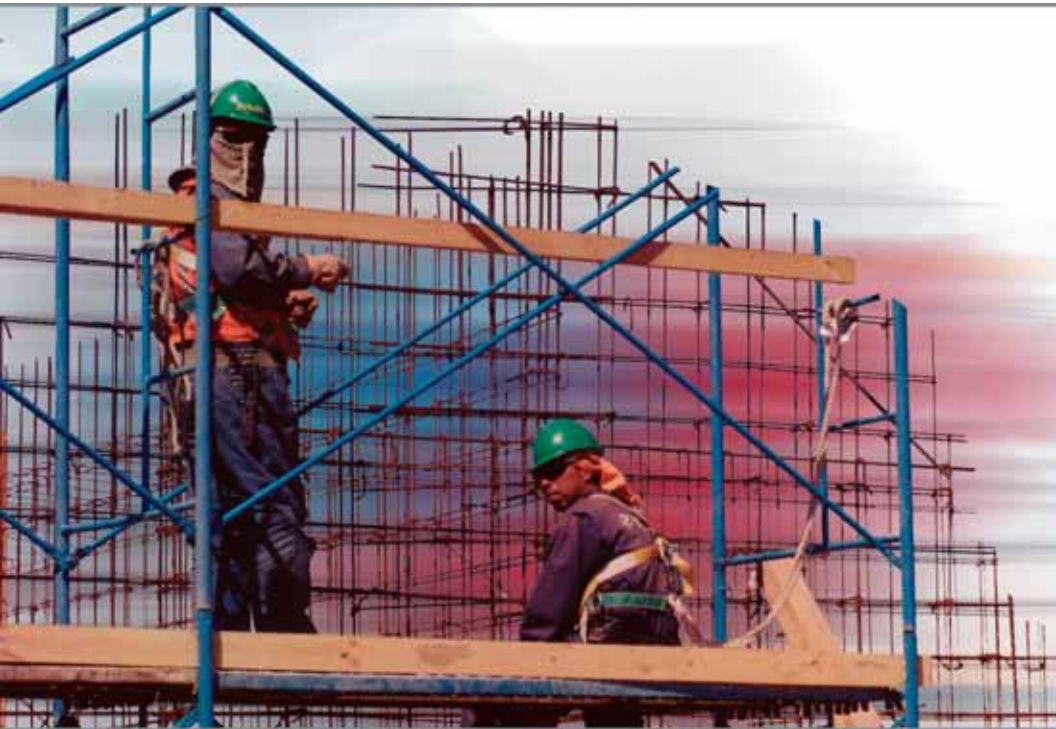
- ◆ Ensuring that the defendant's procedural rights and guarantees are respected and assuring his or her effective and equal participation on the procedure.
- ◆ Providing the charged or accused with legal representation, which entails taking part in all legal procedures and hearings associated with the case.
- ◆ Assisting the charged or accused by providing information about all of the actions directed against him or her. Given that the public defender must be present in order for most of the actions or hearings to be considered valid, the government has created 145 public defender positions (filled by government employees of the Criminal Public Defender's Office) and approximately 270 defense positions that are awarded through to attorneys in private practice through a public bidding system.

Defensoría  
Sin defensa no hay justicia









# IMPLEMENTATION





REPUBLICA DE CHILE

# CODIGO PROCESAL PENAL

EDICION OFICIAL



EDITORIAL JURIDICA DE CHILE

CODIGO PROCESAL PENAL



## LEGISLATIVE EFFORT, RESEARCH AND FOLLOW-UP

The Ministry of Justice plays an important role in legislative matters. It is the only actor to be granted legislative initiative under the Reform.

The Criminal Procedure Reform involved the creation and promulgation of the new Criminal Procedure Code and the formulation and passage of laws designed to create the new institutions required by the reform (as the Public Prosecutor's Office and the Criminal Public Defender Office), and the supervisory judges (*jueces de garantía*) and the oral criminal trial court judges.

The evaluation of the process of implementing the reform allowed the framers to identify aspects that had to be modified in order to ensure that the system would run efficiently. This led to changes to the Criminal Procedure Code such as the law that increases the authority of the police in certain situations in order to protect victims' rights or the law that establishes the gradual appointment of supervisory judges and criminal oral trial judges and the progressive increase in their workloads.

In regard to research and follow-up, the Ministry of Justice acts on its own initiative and as Executive Secretary of the Criminal Procedure Reform Coordination Commission through the Joint Follow-up Commission and has engaged in ongoing follow-up and evaluation activities through a variety of studies and initiatives such as:

- ◆ The Inter-institutional Statistical Yearbook of the Criminal Justice System.
- ◆ Inter-institutional Training Programs.
- ◆ Regional workshops.
- ◆ The Santiago Justice Center (*Centro de Justicia de Santiago*) User Manual.
- ◆ Empirical evaluation of the Criminal Procedure Reform.









## RESOURCES, AN HISTORICAL INVESTMENT IN CHILEAN JUSTICE

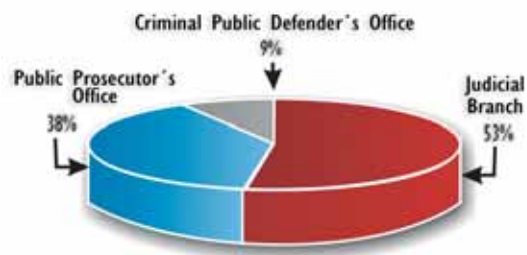
The implementation of the Criminal Procedure Reform represents a total investment of approximately 550 million dollars. The resources are distributed among the main institutions that form part of the system in the following manner:

Judicial Branch: \_\_\_\_\_ 300 million

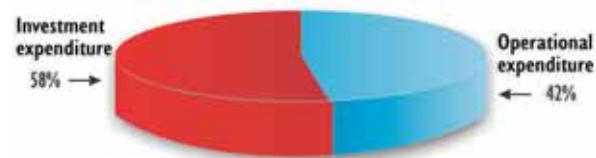
Public Prosecutor's Office: \_\_\_\_\_ 218 million

Criminal Public Defender's Office: \_\_\_\_\_ 50 million

*Distribution of the total investment in the Criminal Procedure Reform among the most important institutions in the new system.*



*Distribution of the cost of the CPR implementation structure*



As the graph indicates, by the end of President Ricardo Lagos' administration the Chilean government will have promoted an historic strengthening of the investments made in the justice sector. In fact, beginning in 2005 expenditures related to the Criminal Procedure Reform will more than double the amount of money that Chile allocates to its judicial administration system. The percentage of public spending allocated to the justice sector will have risen from 0.9% in 1999 to over 2% by the year 2005.









## HUMAN RESOURCES

To accomplish with the standards of efficiency looked by this reform, it must increased substantially the professionals' endowment dedicated to solve criminal conflicts.

In the **Judicial Branch**, the former system had 79 criminal court judges dedicated to investigate, accuse and judge. The Criminal Procedure Reform gradually eliminates these positions, as there are solved the remaining cases in agreement to the gradual installation of the new system.

The Criminal Procedure Reform relies on 420 supervisory judges (jueces de garantía) and 396 oral criminal trial judges, who play their roles supported by more than 2.200 professionals and administrative officers.

The **Public Prosecutor's Office**, has 642 prosecutors distributed across the country, with approximately 3 thousand professionals and administrative officers that support them in the investigation of criminal facts, the execution of public criminal actions and the attention and protection of victims and witnesses.

The **Criminal Public Defender's Office** provides high quality professional defense across 145 public defender positions (filled by government employees of the Criminal Public Defender's Office) with the support of almost 450 professionals and administrative, and of approximately 270 defense positions that are awarded through to attorneys in private practice through a public bidding system.







## INFRASTRUCTURE FOR THE NEW JUSTICE

The implementation of the Criminal Procedure Reform does not only imply the introduction of new procedures related to the judicial administration system through the creation of new institutions, but also the creation of infrastructure reflects the principles upon which the new system is based, including individuals' dignity and public and oral trials.

To this end, the Chilean government developed a timeline for the creation of Supervisory Courts, Oral Criminal Trial Courts, and the offices for Public Prosecutors and public defenders. This effort will involve an investment of over 300 million dollars.

The new courts alone represent an investment of over 190 million dollars, which will be used to build 84 new buildings totaling more than 207,000 square meters.

*The following is a break-down of spending by institution:*

<b>Judicial branch:</b>	US\$ 192,220,151	=	84 Courts
<b>Public prosecutor's office:</b>	US\$ 100,702,996	=	150 Buildings
<b>Public defender's office:</b>	US\$ 7,086,400	=	94 Buildings





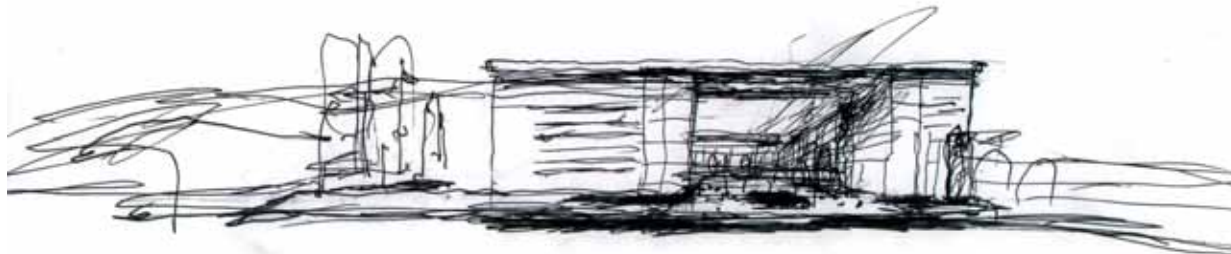


## SANTIAGO JUSTICE CENTER

Given that the Metropolitan Region is Chile's most populous area –it is home to 6 million people, or over one third of the country's total population-, the implementation of the reform involved an additional effort in terms of infrastructure.

This led to the construction of the Santiago Justice Center. The building is the largest of its kind in Latin America, with an approximate surface area of 115,000 square meters. It houses 302 supervisory and oral criminal trial judges, 76 public prosecutors, 47 public defenders, and more than 1,500 professionals, technicians, and support staff. It also features security areas for transferring inmates to courts and tribunals through special tunnels, which optimizes transfers between detention centers and courts, thereby minimizing the negative impact of inmate transfers in the urban environment.

The total estimated investment for this center is nearly 80 million dollars.











## DISTRIBUTING INFORMATION ABOUT THE NEW SYSTEM

The material and legal efforts associated with implementing Chile's new criminal justice system have been accompanied by an effort to familiarize the citizenry with the various aspects of the new system, which is designed to help them assume the new rights and responsibilities that it represents.

To this end, the Lagos administration has promoted a series of projects designed to distribute information about the reform through the Ministry of Justice. The purpose of these efforts is to familiarize the community with the organization of the new system, the roles of each actor, and the rights of victims, witnesses, and the accused.

This effort includes a variety of actions such as:

### *Mass media campaigns:*

Designed to publicize the reforms and educate the community through the television, radio, and written press.

### *On-site campaigns:*

Including talks, seminars, workshops, and other educational activities led by government officials, attorneys, journalists, and members of «Young People for the Reform» («*Jóvenes por la reforma*»), a group of student volunteers from law programs throughout the country.

### *Principal products:*

- ◆ Magazine «La Nueva Justicia Avanza»: Through its 5.000 monthly copies, this magazine realizes of the advances and news related to the implementation of the new system.
- ◆ Electronic bulletin «La Reforma al día»: every two weeks this e-bulletin spreads the advance of the implementation of the new system on the part of the Coordinating Unit of the Criminal Procedure Reform of the Ministry of Justice.
- ◆ Comic «El juicio y la verdad», from the adjustment of

the script of «The Red Hood» story, graphically explains the new criminal procedure.

- ◆ Advertising spots spread in open television and cable.
- ◆ Radioshows, Jingles and radial microprograms in radio stations of the whole country.
- ◆ Posters with the rights of victims and arrested distributed in the police units and courts.
- ◆ Set of 4 educational primers that explain the rights of victims and arrested, the functioning of the new criminal procedure, the alternative exits, and the oral and public trial.
- ◆ Web page [www.minjusticia.cl/reforma/index.htm](http://www.minjusticia.cl/reforma/index.htm): inside the web page of the Ministry of Justice the Criminal Procedure Reform relies on a page that contains all the information related to it and its implementation process.
- ◆ Merchandising products.







# OPERATION

in numbers





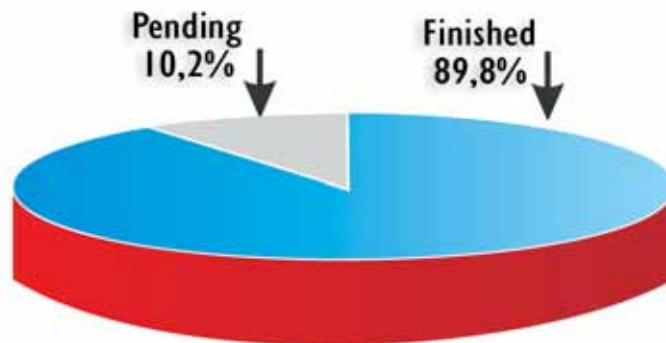


## TRANSACTION TIMING

The averages of transaction of the causes, from its beginning to its term, are:

◆ Robberies: ..... 88.5 days	◆ Injuries: ..... 71.2 days
◆ Thefts: ..... 47.3 days	◆ Homicides: ..... 251.8 days
◆ Drugs: ..... 198.6 days	

### CASE FINISHED AND PENDING FROM 16/12/2000 TO THE 31/12/2004

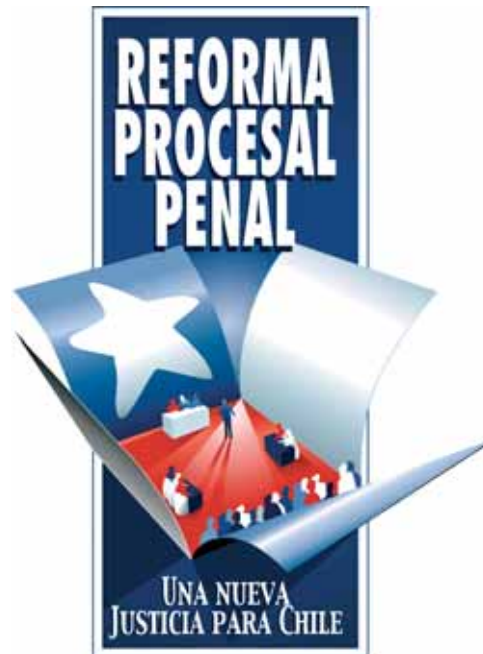


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Más información en [www.minjusticia.cl](http://www.minjusticia.cl)

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*Criminal Procedure Reform implementation 2000- 20005*

*More information in [www.minjusticia.cl](http://www.minjusticia.cl)*