

LAW NO. 19,970

CREATION of the NATIONAL REGISTRY OF DNA

Mindful that the H. Congress has given its approval to the next bill:

Created the National DNA Records

CHAPTER I  
General Provisions

**Article 1** .- National Registration System of DNA. This law regulates a National Registration System of DNA formed on the basis of certain genetic markers during a criminal investigation.

For genetic fingerprinting shall, for these purposes, the alphanumeric registration staff prepared solely on the basis of genetic information that is polymorphic in the population, lack of direct association in the expression of genes and provide identifying information only.

The acquisition of genetic fingerprinting was carried out by professionals and technicians working at the Legal Medical Service, or public or private institutions which are found accredited to that effect with the service.

The administration and custody of the system will be in charge of the Civil Registry and Identification, corresponding generally to the Forensic Medical Service of the information entering and upon special accreditation for the purpose and only for the tracks which have given the public or private institutions alluded to in the preceding paragraph.

**Article 2** .- Principles. The system shall be privileged. The information contained herein may only be directly accessed by the public prosecutor and the courts. The police may obtain access authorization of the Public Ministry, public defenders and private, with the permission of the respective court.

In no event may constitute the base system or source of discrimination, stigmatization, impairment of dignity, privacy, privacy or honor of any person.

**Article 3** .- Nature of the data and their ownership. The information contained in the System and in particular biological samples and genetic markers is considered sensitive data holders, in accordance with Law No. 19,628 on the protection of privacy.

## CHAPTER II From the Registers

**Article 4** .- records. The system will consist of the Register of Offenders Charged Registry, the Registry of Evidence and Background, the Victims Register and the Register of Disappeared Persons and Their Families.

**Article 5** .- Registration Damned. The Registry of Convicted contain the genetic fingerprints of persons who have been convicted in a criminal prosecution by final sentence, in the cases referred to in Article 17 of the Act.

The genetic markers included in the Register shall be integrated in addition to the history as recorded in the criminal record of the damned. The elimination of the background information contained in criminal record, made in accordance with the law and the rules should not entail the elimination of the genetic blueprint contained in the Register referred to in this article.

**Article 6** .- Charged Registration. Charged Registry contains the genetic fingerprints of those who had been charged with a crime, determined on the basis of biological samples obtained in accordance with the provisions of the Criminal Procedure Code and Article 17 of the Act.

**Article 7** .- Evidence and Background Register. In the Registry of Evidence and Background genetic fingerprints are stored which have been obtained in the course of a criminal investigation and which may correspond to unidentified people.

**Article 8** .- Victims Register. The Victims Register will contain the genetic fingerprints of the victims of a crime, identified in the course of criminal proceedings.

In any case, not be incorporated into the genetic fingerprint record of the victim expressly opposes it. For this purpose, who takes the biological sample recorded the fact correspond to a victim. The Forensic Medical Service or, where appropriate, especially accredited institution has determined the genetic fingerprint, shall not incorporate it into the registry to receive such instruction prosecutors, who previously consulted the victim, informing you of your right.

The tracks are added to this registry will be removed as provided in Article 18.

**Article 9** .- Registration for Missing and their Families. The Registry of Missing and their Families will contain the genetic fingerprints of:

- a) dead or unidentified human remains;
- b) biological material from persons presumably lost, and
- c) persons who have disappeared or lost a family member, voluntarily agree to donate a biological sample that may be useful for identification.

### CHAPTER III

From the samples, obtaining evidence, identifying genetic fingerprints and matching them

**Article 10** .- biological sampling. The circumstances and manner in which they proceed to the taking of biological samples are governed by the provisions of the Criminal Procedure Law are applicable.

**Article 11** .- Reserve and custody. Any person engaged in sampling, obtaining evidence and identification of genetic fingerprints, the reservation must maintain the history and integrity of the chain of custody, according to the requirements imposed by the regulations referred to in Article 21 of this law.

**Article 12** .- Transfer of report and biological materials. The agency has determined the genetic fingerprint evacuate the report to account for the expertise and forward it to the public prosecutor or the court concerned, as may correspond. In the case of public or accredited private institutions should also refer to the Legal Medical Service of all the biological material and the rest of the DNA extracted, from which the trace was obtained, a copy of the aforementioned report and other background the Regulations.

**Article 13** .- Expertise Matching and Referral Report. The Forensic Medicine Department proceed with its expertise in matching the genetic fingerprint in question, contrasting with the other tracks contained in one or more System records, as he has been specifically required in criminal proceedings.

Practiced collation, the Forensic Medicine Department sent to public prosecutor or the court, as applicable, the report to account for the expertise and results.

**Article 14** .- Preservation and destruction of biological material. Evacuated immediately after the report mentioned in the preceding article or of receipt of the record referred to in Article 12, the Forensic Medicine Department must carry out the destruction of biological material that has been subject to DNA testing.

However, when obtaining biological material is qualified by the Legal Medical Service and technically unique, the public prosecutor shall order the retention of part of one, up to thirty years.

The destruction or preservation of biological samples shall be recorded in writing by the officer. Such records shall contain information identifying the samples in question, and the reasons that in the case, they have justified the conservation measure.

Officials in charge of destruction of biological samples shall be submitted monthly to his superior admitted sample lists, destroyed and preserved in that period, including, where appropriate, the reasons referred to in the preceding paragraph. Also, a consolidated report

containing the list of biological samples entered, destroyed and preserved in the respective period shall be forwarded biannually to the National Director of the Forensic Medical Service for the regional medical directors, or in the case of the Metropolitan Region of Santiago, by the competent department head.

Officials who must come to the destruction of biological material, failed to do so, shall incur administrative liability.

**Article 15** .- Reimbursement. The Public Ministry, the complainant, the Public Defender or the defender, as applicable, shall refund the fare to the institution that has determined the genetic fingerprint or performed the skill of comparison, this amount will constitute income of the institution itself. The above is without prejudice to a ruling on costs.

However, in the case of genetic markers identified in compliance in the second and third paragraphs of Article 17, the amount of expertise will be borne by the Legal Medical Service. In such cases the identification of genetic markers should always request to that service.

The tariffs charged by public institutions shall be fixed annually by resolution of the top manager or head of the respective entity.

#### CHAPTER IV Administration of the National DNA records

**Article 16** .- Use of genetic markers in the System records. In the case of genetic markers for convicted or charged, their incorporation into the respective records of the system will be implemented by court order.

In the case of genetic markers for victims, evidence or missing and their families, their incorporation in the respective System records will be executed by order of public prosecutor, subject to the provisions of article 8.

In the cases referred to in the preceding paragraphs, the incorporation in the records shall be enforced by the agency has determined the genetic fingerprint. In any case, institutions public or private not specially accredited for entering information into the System to transmit the genetic fingerprint Forensic Medical Service, which shall incorporate in the corresponding register.

However, in cases referred to the first paragraph of Article 17 of the Act, the incorporation of the mark in the Register of Offenders will be held by the Civil Registry.

**Article 17** .- Use of genetic markers of the Register of Convicted defendants. When, by final sentence, was damned by some of the crimes envisaged in the next section to an accused whose genetic fingerprint has been determined during a criminal procedure, the procedure to include genetic fingerprint in the Register of Offenders Charged unregistered from .

If was not determined the genetic fingerprint of the accused during the criminal procedure in the sentence the court will be determined following the collection of biological samples if necessary, and included in the Register of Offenders. This will only happen when you condemn the accused by any of the following offenses:

- a) under sections 141, 142, 150 A, 150 B, 296 N ° s. 1 and 2, 313 d, 315, 316, 348, 352, 395, 396, 397 No. 1, 401, 403 bis, 433, 436 first paragraph, 440, 474, 475, 476, and 480 of the Criminal Code;
- b) under paragraphs 1, 5, 6 and 7 of Part VII and 1 and 2 of Title VIII of Book II of the Penal Code and
- c) development or drug trafficking or terrorist offense. In any case, the competent court, ex officio or at the request of the prosecutor, and in consideration of the personal background of the offender, and the nature, methods and motivation behind the crime, the sentence may order in practice the same measures of biological sampling and identification and registration of genetic fingerprints for a condemned crime penalty is not situated in the situations described in the preceding paragraph.

**Article 18** .- Disposal of genetic fingerprints contained in the system. The genetic fingerprints contained in the records of defendants and victims, will be eliminated once it has terminated the respective criminal proceedings. If there was a trial, since the removal shall be ruled by an enforceable resolution, subject to the provisions of paragraph one of the preceding article.

The Civil Registry and Identification must carry out the removal or re-referred to in the preceding paragraph no later than three days, counted since it was reported the completion of the procedure by the prosecutor. Notification shall be given by any suitable means capable of delivering a reliable record of his office and reception. Likewise shall the Civil Registry and Identification at the request of the victim or the accused, when they show that they have the end of the procedure, a certificate issued by the prosecutor or the court concerned.

In any case, the genetic fingerprints contained in the records of defendants, victims and evidence and background, will be removed after thirty years from the date of joining them.

Of removing and re-entry of the background in this article shall be recorded in writing by the officer. Such records shall contain information identifying genetic fingerprints in question, and the communication of completion of the procedure, if applicable.

Officials in charge of the elimination of genetic markers should refer to their superiors monthly lists of tracks removed and re-enter that period, including the data referred to in the preceding paragraph.

Officials who must come to the elimination or re-entry of the history of records, fail to do or show them to be out of time, shall incur administrative liability.

## CHAPTER V Responsibilities and Sanctions

**Article 19** .- Access, disclosure and misuse of genetic information. Who, speaking in one of the procedures covered by this law because of their position or profession, make it possible to access to records or examinations to unauthorized persons, or divulge or misuse, shall be punished with rigorous imprisonment in its minimum degree medium and fine of six to ten monthly taxation units.

If access, disclosure or use is carried out on biological samples or evidence, the penalty is imprisonment less in its medium degree and a fine of six to ten monthly taxation units.

Those without the qualifications referred to in paragraph one, accedieren to records, tests or samples, divulge or misuse, shall be punished with imprisonment for a term less in degree at least half or a fine of six to ten monthly taxation units.

**Article 20** .- Obstruction of justice. That alters the biological samples which have to be subjected to the DNA test, falsify the results of such examinations or determining the genetic fingerprint; failure to do the truth in the expert report of examination or comparison, or adulterates its contents, shall be punished rigorous imprisonment penalty in its medium degree and a fine of six to ten monthly taxation units.

With the same punishment shall be punished who improperly or alters eliminate traces genetic and associated data contained in the National DNA records.

Anyone who has the duty to intervene in any of the procedures governed by this Act by reason of his office or profession, commits any of the conduct covered in the foregoing paragraphs shall be punished with rigorous imprisonment penalty in its maximum degree and a fine of six to ten monthly taxation units.

The same penalty will be punished who, having the duty to incorporate a genetic fingerprint records to the National DNA does not.

## CHAPTER VI Final Provisions

**Article 21** .- Regulation. A regulation, issued through the Ministry of Justice, determining the character of the National DNA records: the modalities of its administration, and technical standards governing the procedures for sampling, preservation of evidence, and its chain of custody.

Also govern the requirements and conditions to be met by public or private institutions that wish to demonstrate to the Forensic Medicine Department to determine their suitability and incorporate genetic fingerprints in the system, according to the provisions of Article 199 bis of the Criminal Procedure Code.

**Article 22** .- Consistency. Shall apply as does not object to the provisions of this Act, the rules contained in Law No. 19,628 on the protection of privacy.

**Article 23** .- Amendments to Code of Criminal Procedure. Introduce the following amendments to the Code of Criminal Procedure:

**1** .- adding the following third paragraph, again, Article 198:

"If those establishments not be found accredited to the Forensic Medicine Department to determine genetic fingerprints, take biological samples and obtain the necessary evidence, and shall transmit to the appropriate institution for this purpose, according to the law creating the National Registration System of DNA and its Regulations. "

**2** .- Introduce the following article 199 bis, again:

"Article 199 bis. Tests and DNA testing. The examinations and biological tests for the identification of genetic fingerprints may only be made by professionals and technicians working at the Forensic Medicine Department, or those public or private institutions which are found accredited to that effect with the Service.

The accredited institutions will be included in a roster that, in accordance with the provisions of the Regulations, the Legal Medical Service published in the Official Journal. "

**Article 24** .- Term. This Law shall come into force on the day of publication in the Official Journal on Regulation referred to in Article 21.

Transitory Provisions

**Article 1** .- For the purposes of Article 5, the Forensic Medicine Department, or public or private institutions accredited to it, determine the genetic fingerprint of the person who is serving a sentence for any of the offenses described in the Article 17 after extraction of the respective biological sample in institutions in which they were interned. Prison Service informed that they are not convicts held the place and time that must provide their biological sample, failing to inform the court of law on the breach of that obligation.

**Article 2** .- Specific rules for the trial conducted under the Code of Criminal Procedure. In the trial conducted under the Code of Criminal Procedure will be particularly the provisions of the following rules:

- a) References in this Act shall be made defendants to the defendants. Consequently, the Register of Charged contain, apart from the genetic fingerprints of suspects in accordance with the rules of criminal procedure code, those persons who were tried in accordance with the provisions of the Code of Criminal Procedure;
- b) The functions and powers in this bill are allocated to the Public Prosecutor shall be discharged or assumed by judges with expertise in criminal;
- c) The judges with criminal jurisdiction in order that the Register for incorporation of genetic markers identified from biological samples obtained during the process of finding relevant circumstances of the investigation under the provisions of Articles 110, 111, 145 bis and 221 of the Criminal Procedure Code;
- d) In relation to valuations for determining the genetic blueprint, will apply in sections 221 and 245 of the Code of Criminal Procedure, and
- e) The communication referred to the second paragraph of Article 18 shall be made by the tribunal which met in the first instance trial, in the same way under that provision.

**Article 3** .- The largest expenses incurred this law during the first year of implementation, will be financed from resources allocated to the Civil Registry and Identification and the Forensic Medical Service in their respective budgets, which will correspond to each one such institution.".

Having complied with the requirements in No. 1 of Article 82 of the Constitution of the Republic and by that I have been pleased to approve and sanction, and therefore it enacted and take effect as Republic Act.

Santiago, 10 September 2004 .- Ricardo Lagos Escobar, President of the Republic .- Luis Bates Hidalgo .- Justice Minister Nicolas Eyzaguirre Guzman, Minister of Finance.

What you transcribe for information .- compliments to you, Jaime Arellano Quintana, Secretary for Justice.

## Constitutional Court

### Draft law on creation of the National DNA records

The Secretary of the Constitutional Court, the undersigned, certify that the Honorable Senate sent the bill set out in the field, approved by Congress, so that this Tribunal to exercise the constitutional control on the letter b) of article 2 transient, just, and sentence of 19 August 2004 given in the file Role No. 419 stated:

1. The letter b) of article 2 transition, the project submitted, is constitutional.
2. That the articles 2, 8, 14, 16 and 2 transient, single paragraph, letters a), c), d) e), are equally constitutional.

Santiago, August 24, 2004 .- Rafael Larraín Cross, Secretary.