

Decree Number _-2017

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

CONSIDERING:

That the State of Guatemala is organized to protect the person and the family whose supreme goal is the realization of the common good, with the State's duties of freedom, justice, security, peace and the integral development of the person, adopting necessary measures to prevent, eliminate and sanction any type of

- Violence against children, girls, adolescents and women.

CONSIDERING:

That it is necessary to provide tools and modernize criminal investigation through the identification by means of genetic forensic analysis that helps to have greater certainty about those responsible for criminal acts, in order to fulfill the supreme purpose of the State.

CONSIDERING:

That the sexual crimes contained in the Law Against Sexual Violence, Exploitation and Trafficking in Persons, are consistent with international conventions ratified by the State of Guatemala for the sanctioning of activities of human trafficking and sexual violence; however, they do not comprehensively address the recidivism of these criminal behaviors, which respond mainly to the psychological motivations of sexual aggressors.

SO:

In exercise of the powers conferred upon him by article 171 letter a) of the Political Constitution of the Republic of Guatemala.

DECREE: I

The next:

LAW OF THE BANK OF GENETIC DATA FOR FORENSIC USE

ARTICLE 1. - Creation. The Bank of Genetic Data for Forensic Use is created, hereinafter referred to as El Banco, which will be administered by the National Institute of Forensic Sciences of Guatemala -INACIF-, which will make available to the Public Ministry all the information, which It can only be used for criminal investigation and the respective processes.

ARTICLE 2. - Object. The Bank will have as objective the collection of genetic information to facilitate the clarification of the facts that are the subject of a criminal investigation.

ARTICLE 3. - Genetic Bank. The Bank will store and systematize the genetic information of the persons who are apprehended for any crime, as well as the biological samples obtained in the course of a criminal investigation in order to feed automatically, for either of the two routes. The Bank of Dates Genetico. The Regulation of the present Law will establish the procedure and the adequate protocols for the obtaining of the biological samples.

The registered genetic information will consist of the result obtained from the analysis of human identification in forensic genetics. It will be administered within the computer database that the National Institute of Forensic Sciences of Guatemala possesses.

ARTICLE 4. - Application. The genetic exams will be practiced by the National Institute of Forensic Sciences of Guatemala at the request of the Public Ministry or the jurisdictional body in charge of who is the file, who will feed the database of data that contain the genetic profiles.

ARTICLE 5. - Registration. The Public Ministry will carry a National Registry of Sexual Offenders, about the persons who have been sentenced for crimes against freedom and sexual indemnity, regulated in the Penal Code and other specific norms of the matter. From now on it will be called comma The Registry.

The Registry must contain the following information: I

a) Names and surnames. In case of possessing them, the corresponding nicknames, pseudonyms or nicknames will also be consigned

b) Updated photography.

c) Date and place of birth.

d) Nationality.

e) Unique Code for the identification of the Personal Identification Document or passport in the case of foreign persons.

f) Reference of the genetic information that will be taken directly from the Bank.

g) Address where you will reside.

h) Name of the employer with whom he worked, address of the job site and position.

All crimes against freedom and sexual indemnity, regulated in the Penal Code and other specific norms of the matter, will have as an accessory penalty that the condemned one inform and update his data in The Registry, during the first five years, regarding the changes that effect on the information of paragraphs g) and h) of this article.

The Public Ministry will issue certifications to the persons that appear in the Registry, as well as certification of not being included in said Registry only when the work to be performed, relates to permanent or personal activities with children, children and adolescents. The certification of not being included in said Registry will be an indispensable requisite for working with minors.

The Public Ministry shall request the judge to include in the judgment the loss of parental authority when the accused is sentenced for committing any sexual offense against any person under his or her parental authority.

ARTICLE 6.- Article 61 of the Penal Code, Oecreto Number 17-73 of the Congress of the Republic is amended, which remains as follows:

"ARTICLE 61.- Publication of the sentence The publication of the sentence is an accessory penalty to the main one imposed for crimes against honor and against sexual freedom and indemnity, regulated in the Penal Code and other specific rules of the matter

In cases of offenses against honor, at the request of the victim or his heirs, the judge, at his discretion, ordered the publication of the sentence in one or two newspapers of the largest circulation in the Republic, at the expense of the convicted or of the applicants subsidiary, when it deems that advertising can contribute to repair the moral damage caused by the crime. In no case may the publication of the judgment be ordered when it affects minors or third parties.

In the cases of crimes against freedom and sexual indemnity, the sentence will be published in the official electronic pages of the Public Ministry and Judicial Branch, without making public the personal data of the victim. In no case may the publication of the sentence be ordered when the convicted person is a minor. "

ARTICLE 7. - Verification of information. The Public Ministry may corroborate the information provided by the person at any time in order to establish that it is true.

ARTICLE 8. - Omission and falsehood. In case of omission in the updating of information, the Public Ministry in its capacity as administrator of the Registry will impose a fine of two minimum salaries in force at the time of the omission. If false information is included, the person responsible will be criminally prosecuted.

ARTICLE 9. - Disappearance. In cases where it is not possible to establish communication with the person subject to the Registry, their disappearance will be presumed, and alerts will be issued ex officio to locate the whereabouts of the person.

ARTICLE 10. - Reserve. The information contained in the Registry will be considered as sensitive and confidential data, for which it will only be provided to the Public Ministry, to judges and courts throughout the country in the framework of an investigation for the commission of an unlawful act.

ART [SECTION 11. - Lateability. Both The Bank and The Registry will implement the ii.

necessary mechanisms to keep the information unchanged.

ARTICLE 12. - Convicted abroad. The Registry must also contain information on those persons who were convicted in another country for crimes against freedom and sexual indemnity and reside in Guatemalan territory, observing the provisions of international treaties accepted and ratified by Guatemala.

The information referred to in letter f) of article 5 of this law shall be requested from the corresponding institution of the country of origin or may be requested to take a sample from INACIF, whichever is more expeditious.

ARTICLE 13. - Incorporation. The National Institute of Forensic Sciences and the Public Ministry shall coordinate with the Ministry of the Interior and the Judiciary so that all the genetic information and all that related to this Act in its records may be incorporated into the Bank and the Registry. , as appropriate.

ARTICLE 14. - Prohibition. Within the framework of this law, the use of samples of deoxyribonucleic acid (AON) for any purpose other than human identification in the forensic and criminal investigation field is prohibited.

ARTICLE 15. - Financial Provisions. The Ministry of Public Finance shall create a specific item in the General Budget of Income and Expenditures of the State, which allows for the continual allocation of financial resources to the Public Ministry and the National Institute of Forensic Sciences of Guatemala, at their request, for the purpose of to implement, execute and maintain indefinitely the Bank of Genetic Dates for Forensic Use and the National Registry of Sexual Aggressors, which are created by this Law.

ARTICLE 16.- Regulation. Within fifteen days following the entry into force of this law, the National Institute of Forensic Sciences of Guatemala shall issue the regulations of The Bank and Public Ministry shall issue the regulation. of The Registry.

ARTICLE 17.- Validity. This Decree shall enter into force six months after its publication in the Official Gazette, with the exception of Article 15 of this Law, which shall come into force eight days after its publication in the Official Journal.

Refer to the Executive Body for sanction, promulgation and publication. Issued at the Palace of the Legislatlvo Organism, in Guatemala City, of two thousand and seventeen.