

personnel, information, or operations, of the Department of Defense, including with respect to the background investigations of covered foreign individuals requiring access to classified information.

(2) The Secretary shall ensure that the standards developed under paragraph (1) are consistent with relevant directives of the Security Executive Agent.

(3) The Secretary shall designate an official of the Department of Defense to be responsible for executing the centralized process developed under paragraph (1) and adjudicating any information discovered pursuant to such process.

(b) OTHER USES.—In addition to using the centralized process developed under subsection (a)(1) for covered foreign individuals, the Secretary may use the centralized process in determining whether to grant a security clearance to any individual with significant foreign influence or foreign preference issues, in accordance with the adjudicative guidelines under part 147 of title 32, Code of Federal Regulations, or such successor regulation.

(c) COVERED FOREIGN INDIVIDUAL DEFINED.—In this section, the term “covered foreign individual” means an individual who meets the following criteria:

(1) The individual is—

(A) a national of a foreign state;
(B) a national of the United States (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) and also a national of a foreign state; or

(C) an alien who is lawfully admitted for permanent residence (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(2) The individual is either—

(A) a civilian employee of the Department of Defense or a contractor of the Department; or

(B) a member of the armed forces.

(Added Pub. L. 115-232, div. A, title XVI, § 1622(a), Aug. 13, 2018, 132 Stat. 2117.)

Editorial Notes

REFERENCES IN TEXT

Executive Order 13467, referred to in subsec. (a)(1), is Ex. Ord. No. 13467, June 30, 2008, 73 F.R. 38103, which is set out as a note under section 3161 of Title 50, War and National Defense.

§ 1565. DNA identification information: collection from certain offenders; use

(a) COLLECTION OF DNA SAMPLES.—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

(2) For each member described in paragraph (1), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog

Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

(b) ANALYSIS AND USE OF SAMPLES.—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall—

(1) carry out a DNA analysis on each such DNA sample in a manner that complies with the requirements for inclusion of that analysis in CODIS; and

(2) furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion in CODIS.

(c) DEFINITIONS.—In this section:

(1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).¹

(e) EXPUNGEMENT.—(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(2) For purposes of paragraph (1), the term “qualifying offense” means any of the following offenses:

(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(C) A qualifying military offense.

(3) For purposes of paragraph (1), a court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

¹ See References in Text note below.

(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.

(Added Pub. L. 106-546, §5(a)(1), Dec. 19, 2000, 114 Stat. 2731; amended Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-405, title II, §203(c), Oct. 30, 2004, 118 Stat. 2270.)

Editorial Notes

REFERENCES IN TEXT

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsecs. (a)(2), (d)(2), and (e)(2)(A), is section 3 of Pub. L. 106-546, which was classified to section 14135a of Title 42, The Public Health and Welfare, prior to editorial reclassification as section 40702 of Title 34, Crime Control and Law Enforcement.

Section 4 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (e)(2)(B), is section 4 of Pub. L. 106-546, which is classified to section 40703 of Title 34, Crime Control and Law Enforcement.

The Uniform Code of Military Justice, referred to in subsec. (d), is classified to chapter 47 (§801 et seq.) of this title.

Section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (e)(1), is classified to section 12592 of Title 34, Crime Control and Law Enforcement.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108-405 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

“(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.”

2002—Subsec. (f). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

INITIAL DETERMINATION OF QUALIFYING MILITARY OFFENSES

Pub. L. 106-546, §5(b), Dec. 19, 2000, 114 Stat. 2733, provided that: “The initial determination of qualifying military offenses under section 1565(d) of title 10, United States Code, as added by subsection (a)(1), shall be made not later than 120 days after the date of the enactment of this Act [Dec. 19, 2000].”

COMMENCEMENT OF COLLECTION

Pub. L. 106-546, §5(c), Dec. 19, 2000, 114 Stat. 2733, provided that: “Collection of DNA samples under section 1565(a) of such title, as added by subsection (a)(1), shall,

subject to the availability of appropriations, commence not later than the date that is 60 days after the date of the initial determination referred to in subsection (b) [set out above].”

§ 1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes

(a) COMPLIANCE WITH COURT ORDER.—(1) Subject to paragraph (2), if a valid order of a Federal court (or military judge) so requires, an element of the Department of Defense that maintains a repository of DNA samples for the purpose of identification of human remains shall make available, for the purpose specified in subsection (b), such DNA samples on such terms and conditions as such court (or military judge) directs.

(2) A DNA sample with respect to an individual shall be provided under paragraph (1) in a manner that does not compromise the ability of the Department of Defense to maintain a sample with respect to that individual for the purpose of identification of human remains.

(b) COVERED PURPOSE.—The purpose referred to in subsection (a) is the purpose of an investigation or prosecution of a felony, or any sexual offense, for which no other source of DNA information is reasonably available.

(c) DEFINITION.—In this section, the term “DNA sample” has the meaning given such term in section 1565(c) of this title.

(Added Pub. L. 107-314, div. A, title X, §1063(a), Dec. 2, 2002, 116 Stat. 2653.)

§ 1565b. Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates

(a) AVAILABILITY OF LEGAL ASSISTANCE AND VICTIM ADVOCATE SERVICES.—(1) A member of the armed forces, or a dependent of a member, who is the victim of a sexual assault may be provided the following:

(A) Legal assistance provided by military or civilian legal assistance counsel pursuant to sections 1044 and 1044e of this title.

(B) Assistance provided by a Sexual Assault Response Coordinator.

(C) Assistance provided by a Sexual Assault Victim Advocate.

(2) A member of the armed forces or dependent who is the victim of sexual assault shall be informed of the availability of assistance under paragraph (1) as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, or a trial counsel. The member or dependent shall also be informed that the legal assistance and the services of a Sexual Assault Response Coordinator or a Sexual Assault Victim Advocate under paragraph (1) are optional and may be declined, in whole or in part, at any time.

(3) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims’ Counsel under