

Department of Justice

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and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(3) In making the determinations required under this subsection, the Director may hold a hearing at which the Complainant may present evidence in support of his or her claim, in accordance with such procedures as the Director may adopt. The Director is hereby authorized to compel the attendance and testimony of, or the production of documentary or other evidence from, any person employed by the Department if doing so appears reasonably calculated to lead to the discovery of admissible evidence, is not otherwise prohibited by law or regulation, and is not unduly burdensome. Any privilege available in judicial and administrative proceedings relating to the disclosure of documents or the giving of testimony shall be available before the Director. All assertions of such privileges shall be decided by the Director. The Director may, upon request, certify a ruling on an assertion of privilege for review by the Deputy Attorney General.

(f) If the Director orders corrective action, such corrective action may include: placing the Complainant, as nearly as possible, in the position he would have been in had the reprisal not taken place; reimbursement for attorneys fees, reasonable costs, medical costs incurred, and travel expenses; back pay and related benefits; and any other reasonable and foreseeable consequential damages.

(g) If the Director determines that there has not been a reprisal, the Director shall report this finding in writing to the complainant, the FBI, and the Conducting Office.

[Order No. 2264-99, 64 FR 58786, Nov. 1, 1999, as amended by Order No. 2492-2001, 66 FR 37904, July 20, 2001]

§ 27.5 Review.

The Complainant or the FBI may request, within 30 calendar days of a final determination or corrective action order by the Director, review by the Deputy Attorney General of that determination or order. The Deputy Attorney General shall set aside or modify the Director's actions, findings, or conclusions found to be arbitrary, capri-

cious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence. The Deputy Attorney General has full discretion to review and modify corrective action ordered by the Director, provided, however that if the Deputy Attorney General upholds a finding that there has been a reprisal, then the Deputy Attorney general shall order appropriate corrective action.

§ 27.6 Extensions of time.

The Director may extend, for extenuating circumstances, any of the time limits provided in these regulations relating to proceedings before him and to requests for review by the Deputy Attorney General.

PART 28—DNA IDENTIFICATION SYSTEM

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AUTHORITY: 28 U.S.C. 509, 510; 42 U.S.C. 14132, 14135a, 14135b; 10 U.S.C. 1565; Pub. L. 106-546, 114 Stat. 2726.

SOURCE: 66 FR 34365, June 28, 2001, unless otherwise noted.

Subpart A—Qualifying Federal Offenses for Purposes of DNA Sample Collection

§ 28.1 Purpose.

Section 3 of Public Law 106-546 (114 Stat. 2726) directs the collection, analysis, and indexing of a DNA sample from each individual in the custody of the Bureau of Prisons or under the supervision of a probation office who is, or has been, convicted of a qualifying Federal offense. Subsection (d) of that section states that the offenses that shall be treated as qualifying Federal

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offenses are offenses under title 18, United States Code, contained in a list of descriptive terms and code sections, as determined by the Attorney General.

§ 28.2 Determination of offenses.

The following offenses shall be treated for purposes of section 3 of Public Law 106-546 as qualifying Federal offenses:

(a) Any offense under section 1111, 1113, 1114, 1116, 1117, 1118, 1119, 1120, 1121, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2252, 2421, 2422, 2423, 2425, 1201, 1203, 2111, 2112, 2113, 2114, 2116, 2118, or 2119 of title 18, United States Code.

(b) Any offense of voluntary manslaughter under section 1112 of title 18, United States Code.

(c) Any offense under chapter 77 of title 18, United States Code.

(d) Any offense of murder, manslaughter, kidnapping, maiming, incest, arson, burglary, or robbery, and any felony under chapter 109A of title 18, United States Code, where jurisdiction was based on section 1153 of title 18, United States Code.

(e) Any offense under section 371 of title 18, United States Code, in which an object of the conspiracy was the commission of an offense described in paragraph (a), (b), (c), or (d) of this section.

Subpart B—DNA Sample Collection, Analysis, and Indexing

§ 28.11 Definitions.

The following definitions apply to this part:

DNA sample means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

DNA analysis means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

§ 28.12 Collection of DNA samples.

(a) The Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of—

(1) A qualifying Federal offense as described in § 28.2;

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(2) A qualifying military offense, as determined under 10 U.S.C. 1565; or (3) A qualifying District of Columbia offense, as determined under section 4(d) of Public Law 106-546.

(b) Notwithstanding paragraph (a) of this section, the Bureau of Prisons may, but need not, collect a DNA sample from an individual described in paragraph (a) of this section if the Combined DNA Index System contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under 10 U.S.C. 1565.

(c) Each individual described in paragraph (a) of this section shall cooperate in the collection of a DNA sample from that individual by the Bureau of Prisons. The Bureau of Prisons may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual described in paragraph (a) of this section who refuses to cooperate in the collection of the sample.

(d) The Bureau of Prisons may enter into agreements with units of State or local government or with private entities to provide for the collection of samples under this section.

(e) The Bureau of Prisons shall furnish each DNA sample collected under this section to the Federal Bureau of Investigation.

§ 28.13 Analysis and indexing of DNA samples.

(a) The Federal Bureau of Investigation shall carry out a DNA analysis on each DNA sample furnished to the Federal Bureau of Investigation pursuant to section 3(b) or 4(b) of Public Law 106-54, and shall include the results in the Combined DNA Index System.

(b) The Federal Bureau of Investigation shall include in the Combined DNA Index System the results of each analysis furnished to the Federal Bureau of Investigation pursuant to section 1565(b)(2) of title 10, United States Code.

PART 29—MOTOR VEHICLE THEFT PREVENTION ACT REGULATIONS

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29.1 Purpose.

29.2 Definitions.