

program for DNA analyses, which shall be available to public and private laboratories performing forensic DNA analyses;

(B) a blind external proficiency testing program for DNA analyses is already readily available to public and private laboratories performing forensic DNA analyses; or

(C) it is not feasible to have blind external testing for DNA forensic analyses.

(2) As used in this subsection, the term “blind external proficiency test” means a test that is presented to a forensic laboratory through a second agency and appears to the analysts to involve routine evidence.

(3) Notwithstanding any other provision of law, the Attorney General shall make available to the Director of the National Institute of Justice during the first fiscal year in which funds are distributed under this subtitle up to \$250,000 from the funds available under part X of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796kk et seq.] to carry out this subsection.

(Pub. L. 103-322, title XXI, § 210303, Sept. 13, 1994, 108 Stat. 2068.)

#### REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (b)(2), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this Act, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 103-322, which was approved Sept. 13, 1994.

This subtitle, referred to in subsec. (c)(3), is subtitle C (§§210301-210306) of title XXI of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 2065, known as the DNA Identification Act of 1994, which enacted this part and sections 3796kk to 3796kk-6 of this title, amended former sections 3751 and 3753 of this title and sections 3793 and 3797 of this title, and enacted provisions set out as notes under former section 3751 of this title and section 13701 of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(3), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Part X of title I of the Act is classified generally to subchapter XII-L (§3796kk et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

### § 14132. Index to facilitate law enforcement exchange of DNA identification information

#### (a) Establishment of index

The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of—

(A) persons convicted of crimes;

(B) persons who have been charged in an indictment or information with a crime; and

(C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the National DNA Index System;

(2) analyses of DNA samples recovered from crime scenes;

(3) analyses of DNA samples recovered from unidentified human remains; and

(4) analyses of DNA samples voluntarily contributed from relatives of missing persons.

#### (b) Information

The index described in subsection (a) of this section shall include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed by or on behalf of a criminal justice agency (or the Secretary of Defense in accordance with section 1565 of title 10) in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 14131 of this title;

(2) prepared by laboratories that—

(A) not later than 2 years after October 30, 2004, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and

(3) maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of title 10) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

#### (c) Failure to comply

Access to the index established by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

#### (d) Expungement of records

##### (1) By Director

(A) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) of this section the DNA analysis of a person included in the index—

(i) on the basis of conviction for a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 14135a and 14135b of this title, respectively), if the Director 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; or

(ii) on the basis of an arrest under the authority of the United States, if the Attorney General receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.

(B) For purposes of subparagraph (A), the term “qualifying offense” means any of the following offenses:

(i) A qualifying Federal offense, as determined under section 14135a of this title.

(ii) A qualifying District of Columbia offense, as determined under section 14135b of this title.

(iii) A qualifying military offense, as determined under section 1565 of title 10.

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

## (2) By States

(A) As a condition of access to the index described in subsection (a) of this section, a State shall promptly expunge from that index the DNA analysis of a person included in the index by that State if—

(i) the responsible agency or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned; or

(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and the responsible agency or official of that State receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.

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

(Pub. L. 103-322, title XXI, §210304, Sept. 13, 1994, 108 Stat. 2069; Pub. L. 106-113, div. B, §1000(a)(1) [title I, §120], Nov. 29, 1999, 113 Stat. 1535, 1501A-23; Pub. L. 106-546, §6(b), Dec. 19, 2000, 114 Stat. 2733; Pub. L. 108-405, title II, §203(a), (d), title III, §302, Oct. 30, 2004, 118 Stat. 2269, 2270, 2272; Pub. L. 109-162, title X, §1002, Jan. 5, 2006, 119 Stat. 3084.)

### AMENDMENTS

2006—Subsec. (a)(1)(C). Pub. L. 109-162, §1002(1), struck out “DNA profiles from arrestees who have not been charged in an indictment or information with a crime, and” after “provided that”.

Subsec. (d)(1)(A). Pub. L. 109-162, §1002(2), added subpar. (A) and struck out former subpar. (A), which read as follows: “The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) of this section the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 14135a and 14135b of this title, respectively) if the Director 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.”

Subsec. (d)(2)(A)(ii). Pub. L. 109-162, §1002(3), substituted “the responsible agency or official of that State receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.” for “all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.”

Subsec. (e). Pub. L. 109-162, §1002(4), struck out heading and text of subsec. (e). Prior to amendment, text related to authority for keyboard searches.

2004—Subsec. (a)(1). Pub. L. 108-405, §203(a)(1), substituted “of—” for “of persons convicted of crimes;” and added subpars (A) to (C).

Subsec. (b)(2). Pub. L. 108-405, §302, amended par. (2) generally. Prior to amendment, par. (2) read as follows: “prepared by laboratories, and DNA analysts, that undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title; and”.

Subsec. (d)(2)(A). Pub. L. 108-405, §203(a)(2)(B), (C), which directed that subsection (d)(2) be amended by substituting “; or” for period at end and by adding cl. (ii) at end, was executed by making the amendment to subpar. (A) of subsec. (d)(2) to reflect the probable intent of Congress.

Pub. L. 108-405, §203(a)(2)(A), substituted “if—” for “if” and inserted cl. (i) designation before “the responsible agency”.

Subsec. (e). Pub. L. 108-405, §203(d), added subsec. (e). 2000—Subsec. (b)(1). Pub. L. 106-546, §6(b)(1), inserted “(or the Secretary of Defense in accordance with section 1565 of title 10)” after “criminal justice agency”.

Subsec. (b)(2). Pub. L. 106-546, §6(b)(2), substituted “semiannual” for “, at regular intervals of not to exceed 180 days,”.

Subsec. (b)(3). Pub. L. 106-546, §6(b)(3), inserted “(or the Secretary of Defense in accordance with section 1565 of title 10)” after “criminal justice agencies” in introductory provisions.

Subsec. (d). Pub. L. 106-546, §6(b)(4), added subsec. (d).

1999—Subsec. (a)(4). Pub. L. 106-113 added par. (4).

## § 14133. Federal Bureau of Investigation

### (a) Proficiency testing requirements

#### (1) Generally

(A) Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title.

(B) Within 1 year after September 13, 1994, the Director of the Federal Bureau of Investigation shall arrange for periodic blind external tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory.

(C) In this paragraph, “blind external test” means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.