

(g) **POLYGRAPH RESEARCH PROGRAM.**—The Secretary shall carry out a continuing research program to support the polygraph examination activities of the Department of Defense. The program shall include the following:

- (1) An on-going evaluation of the validity of polygraph techniques used by the Department.
- (2) Research on polygraph countermeasures and anti-countermeasures.
- (3) Developmental research on polygraph techniques, instrumentation, and analytic methods.

(Added Pub. L. 108–136, div. A, title X, §1041(a)(1), Nov. 24, 2003, 117 Stat. 1607; amended Pub. L. 109–163, div. A, title X, §1054(a), Jan. 6, 2006, 119 Stat. 3436; Pub. L. 115–232, div. A, title XVI, §1623(a)–(c), Aug. 13, 2018, 132 Stat. 2119.)

REFERENCES IN TEXT

Executive Order No. 12958, referred to in subsec. (c)(1)(B), which was formerly set out as a note under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 13526, §6.2(g), Dec. 29, 2009, 75 F.R. 731.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100–180, title XI, §1121, Dec. 4, 1987, 101 Stat. 1147, as amended, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 108–136, div. A, title X, §1041(b), Nov. 24, 2003, 117 Stat. 1608.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232, §1623(a), amended subsec. (b) generally. Prior to amendment, text read as follows: “Except as provided in subsection (d), the following persons, if their duties are described in subsection (c), are subject to this section:

- “(1) Military and civilian personnel of the Department of Defense.
- “(2) Personnel of defense contractors.
- “(3) A person assigned or detailed to the Department of Defense.
- “(4) An applicant for a position in the Department of Defense.”

Subsec. (c). Pub. L. 115–232, §1623(c)(1), substituted “subsection (b)(1)” for “subsection (b)” in introductory provisions.

Subsec. (e)(2)(A). Pub. L. 115–232, §1623(c)(2), substituted “subsections (b)(1) and (c)” for “subsections (b) and (c)”.

Subsec. (e)(2)(D). Pub. L. 115–232, §1623(b), added subpar. (D).

2006—Pub. L. 109–163 reenacted section catchline without change and amended text generally. Prior to amendment, section related to authority for program for administration of counterintelligence polygraph examinations in subsec. (a), persons covered in subsec. (b), exceptions from coverage for certain intelligence agencies and functions in subsec. (c), oversight in subsec. (d), and polygraph research program in subsec. (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title X, §1054(b), Jan. 6, 2006, 119 Stat. 3438, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to polygraph examinations administered beginning on the date of the enactment of this Act [Jan. 6, 2006].”

CONSTRUCTION

Pub. L. 115–232, div. A, title XVI, §1623(d), Aug. 13, 2018, 132 Stat. 2119, provided that: “Nothing in section 1564a of title 10, United States Code, as amended by this section, shall be construed to prohibit the granting of

a security clearance to persons described in subsection (b)(2) of such section absent information relevant to the adjudication process, as described in part 147 of title 32, Code of Federal Regulations, or such successor regulations.”

§ 1564b. Security vetting for foreign nationals

(a) **STANDARDS AND PROCESS.**—(1) The Secretary of Defense, in coordination with the Security Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), shall develop uniform and consistent standards and a centralized process for the screening and vetting of covered foreign individuals requiring access to systems, facilities, 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.)

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.

(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.)

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".

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

¹ See References in Text note below.

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 Sex-

ual 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 section 1044e of this title shall be provided to a member of the armed forces or dependent who is the victim of sexual assault before any military criminal investigator or trial counsel interviews, or requests any statement from, the member or dependent regarding the alleged sexual assault.

(4) Legal assistance and the services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates under paragraph (1) shall be available to a member or dependent regardless of whether the member or dependent elects unrestricted or restricted (confidential) reporting of the sexual assault.

(b) RESTRICTED REPORTING.—(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces, or an adult dependent of a member, who is the victim of a sexual assault may elect to confidentially disclose the details of the assault to an individual specified in paragraph (2) and receive medical treatment, legal assistance under section 1044 of this title, or counseling, without initiating an official investigation of the allegations.

(2) The individuals specified in this paragraph are the following:

(A) A Sexual Assault Response Coordinator.

(B) A Sexual Assault Victim Advocate.

(C) Healthcare personnel specifically identified in the regulations required by paragraph (1).

(3) In the case of information disclosed pursuant to paragraph (1), any State law or regulation that would require an individual specified in paragraph (2) to disclose the personally identifiable information of the adult victim or alleged perpetrator of the sexual assault to a State or local law enforcement agency shall not apply, except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health or safety of an individual.

(c) DEFINITIONS.—In this section:

(1) SEXUAL ASSAULT.—The term “sexual assault” includes the offenses of rape, sexual assault, forcible sodomy, aggravated sexual contact, abusive sexual contact, and attempts to commit such offenses, as punishable under applicable Federal or State law.

(2) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(Added Pub. L. 112-81, div. A, title V, §581(b)(1), Dec. 31, 2011, 125 Stat. 1431; amended Pub. L. 113-66, div. A, title XVII, §1716(a)(3)(C), Dec. 26, 2013, 127 Stat. 969; Pub. L. 114-92, div. A, title V, §§534(b), 536, Nov. 25, 2015, 129 Stat. 816, 817.)

AMENDMENTS

2015—Subsec. (a)(3), (4). Pub. L. 114-92, §534(b), added par. (3) and redesignated former par. (3) as (4).