

## Department of Justice

## § 28.2

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AUTHORITY: 28 U.S.C. 509, 510; 42 U.S.C. 14132, 14135a, 14135b; 10 U.S.C. 1565; 18 U.S.C. 3600A; Pub. L. 106-546, 114 Stat. 2726; Pub. L. 107-56, 115 Stat. 272; Pub. L. 108-405, 118 Stat. 2260.

SOURCE: Order No. 2699-2003, 68 FR 74858, Dec. 29, 2003, unless otherwise noted.

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

#### § 28.1 Purpose.

Section 3 of Pub. L. 106-546 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 offenses are any felony and certain other types of offenses, as determined by the Attorney General.

[Order No. 2753-2005, 70 FR 4767, Jan. 31, 2005]

#### § 28.2 Determination of offenses.

(a) *Felony* means a Federal offense that would be classified as a felony under 18 U.S.C. 3559(a) or that is specifically classified by a letter grade as a felony.

(b) The following offenses shall be treated for purposes of section 3 of Pub. L. 106-546 as qualifying Federal offenses:

(1) Any felony.

(2) Any offense under chapter 109A of title 18, United States Code, even if not a felony.

(3) Any offense under any of the following sections of the United States Code, even if not a felony:

(i) In title 18, section 111, 112(b) involving intimidation or threat, 113, 115, 245, 247, 248 unless the offense involves only a nonviolent physical obstruction and is not a felony, 351, 594, 1153 involving assault against an individual who has not attained the age of 16 years, 1361, 1368, the second paragraph of 1501, 1509, 1751, 1991, or 2194 involving force or threat.

(ii) In title 16, section 773g if the offense involves a violation of section 773e(a)(3), 1859 if the offense involves a violation of section 1857(1)(E), 3637(c) if the offense involves a violation of section 3637(a)(3), or 5010(b) if the offense involves a violation of section 5009(6).

(iii) In title 26, section 7212.

(iv) In title 30, section 1463 if the offense involves a violation of section 1461(4).

(v) In title 40, section 5109 if the offense involves a violation or attempted violation of section 5104(e)(2)(F).

(vi) In title 42, section 2283, 3631, or 9152(d) if the offense involves a violation of section 9151(3).

(vii) In title 43, section 1063 involving force, threat, or intimidation.

(viii) In title 47, section 606(b).

(ix) In title 49, section 46506(1) unless the offense involves only an act that would violate section 661 or 662 of title 18 and would not be a felony if committed in the special maritime and territorial jurisdiction of the United States.

(4) Any offense that is an attempt or conspiracy to commit any of the foregoing offenses, even if not a felony.

(c) An offense that was or would have been a qualifying Federal offense as defined in this section at the time of conviction, such as an offense under 18 U.S.C. 2031 or 2032, remains a qualifying Federal offense even if the provision or provisions defining the offense or assigning its penalties have subsequently been repealed, superseded, or modified.

[Order No. 2753-2005, 70 FR 4767, Jan. 31, 2005]