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100 North Carson Street
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OPINION NO. 2016-11

DISTRICT ATTORNEY; DNA;
PRISONER; FELONY; NRS
176.0913 requires a biological
specimen to be collected from any
prisoner convicted of a felony
offense who is presently in the
custody of the Nevada Department
of Corrections

Christopher J. Hicks
District Attorney
Washoe County
P.O. Box 11130
Reno, Nevada 89520

Dear Mr. Hicks:

You have requested a formal opinion from the Office of the Attorney General pursuant to Nevada Revised Statute (NRS) 228.150 on the following question:

QUESTION

Does NRS 176.0913 allow a biological specimen for DNA analysis to be collected from any prisoner convicted of a felony offense who is presently in the custody of the Nevada Department of Corrections, regardless of the date of conviction?

SUMMARY CONCLUSION TO QUESTION

NRS 176.0913 requires a biological specimen to be collected from any prisoner convicted of a felony offense who is presently in the custody of the Nevada Department of Corrections, regardless of the date of conviction.

BACKGROUND

In 2013 the Nevada Legislature enacted Senate Bill 243 (SB 243). Act of May 29, 2013, ch. 252, § 11. 2013 Nev. Stat. 1056-83. Section 11 of the bill established the State DNA Database, which is to be overseen, managed and administered by the Forensic Science Division of the Washoe County Sheriff's Office. Section 13 of the bill amended existing provisions of NRS 176.0911-.0917 to require that a biological specimen be obtained if a person is arrested for a felony. If the person is convicted of the felony, the biological specimen must be kept, but if the person is not convicted, the biological specimen must be destroyed and all records relating thereto must be purged from all databases.

Prior to the enactment of SB 243, NRS 176.0913 required that a biological specimen be obtained upon conviction of a felony. NRS 176.0913 replaced NRS 176.111 in 1997. Act of July 16, 1997, ch. 451, § 84, 1997 Nev. Stat. 1669. This office previously opined in correspondence to the Nevada Division of Parole and Probation dated July 12, 1996, that, in the absence of any clear statement of legislative intent that NRS 176.111 apply retroactively, the statute had prospective application only.

ANALYSIS

SB 243, which amended NRS 176.0913, contains the following provisions not included in the Nevada Revised Statutes:

Sec. 33. 1. If a person is convicted of an offense listed in subsection 4 of NRS 176.0913, regardless of the date upon which the conviction is entered, and the person has not previously submitted a biological specimen, the Department of Corrections shall arrange for a biological specimen to be obtained before the person is released from custody, if the person is in the custody of the Department of Corrections.

.....
Sec. 34.

2. The provisions of:

.....
(b) Section 33 of this act apply to a person who is convicted of an offense listed in subsection 4 of NRS 176.0913 before, on or after July 1, 2014.

Act of July 1, 2013, ch. 252, §§ 33-34, 2013 Nev. Stat. 1083.

Christopher J. Hicks
Page 3
December 12, 2016

“[W]hen statutory language is clear on its face, its intention must be deduced from such language.” *Worldcorp. v. State, Dept. of Taxation*, 113 Nev. 1032, 1035-36, 944 P.2d 824, 826 (1997). The provisions of Sections 33 and 34 express a clear legislative intent that a biological specimen be collected from any prisoner convicted of a felony offense who is presently in the custody of the Nevada Department of Corrections, regardless of the date of conviction.


CONCLUSION

Based upon the express language of Senate Bill 243, NRS 176.0913 requires a biological specimen to be collected from any prisoner convicted of a felony offense who is presently in the custody of the Nevada Department of Corrections, regardless of the date of conviction.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:



BRETT RANDT
Chief Deputy Attorney General
Bureau of Gaming & Government Affairs
Boards & Open Government

WBK/KLR