

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

March 25, 2020

OPINION NO. 2019-07

PUBLIC SAFETY; LAW ENFORCEMENT;
SEX OFFENDERS: Statutory interpretation
of whether or not law enforcement agencies
are mandated to obtain and submit to the
Central Repository a full set of fingerprints
and palm prints from a sex offender at their
initial registration pursuant to Nevada
Revised Statute (NRS) Chapter 171, and at
each subsequent in person check-in.

George Togliatti, Director
Nevada Department of Public Safety
Director's Office
555 Wright Way
Carson City, NV 89701

Mindy McKay, Division Administrator
Nevada Department of Public Safety
Director's Office
555 Wright Way
Carson City, NV 89701

Dear Director Togliatti and Administrator McKay:

In your capacities as Director and Administrator of the Nevada Department of Public Safety (DPS), you have requested an opinion from the Office of the Attorney General (OAG) regarding the interpretation of Nevada Revised Statutes (NRS) 179D.151 and 179D.480 as they apply to DPS's

George Togliatti, Director
Mindy McKay, Division Administrator
Nevada Department of Public Safety
Page 2
March 25, 2020

responsibility to obtain, update, and archive fingerprints and palm prints taken from any person required to register as an offender or sex offender under NRS Chapter 179D.¹

In particular, DPS is concerned with whether a local law enforcement agency is mandated to obtain and submit a new set of fingerprints and palm prints whenever a registered sex offender reports to a local law enforcement agency as required by NRS 179D.480. And if they are not, at what frequency should local law enforcement agencies request and submit a full set of fingerprints and palm prints?

QUESTIONS

Are local law enforcement agencies compelled to collect a full set of fingerprints and palm prints from an offender or sex offender every time the offender or sex offender is required to appear in person under NRS 179D.480(1)?

If not, at what frequency should law enforcement agencies submit a full set of fingerprints and palm prints, and who determines how often that should happen?

SUMMARY CONCLUSION

NRS Chapter 179D does not compel law enforcement agencies to obtain a new set of fingerprints and palm prints each time an offender or sex offender appears in person under the requirements of NRS 179D.480. Assuming the record of registration already includes a complete set of fingerprints and palm prints, the statutory framework of NRS Chapter 179D gives local law enforcement agencies the discretion to collect a new set of prints or rely upon the existing set of prints as the facts and circumstances warrant. Local law enforcement agencies should exercise that discretion in reference to the purposes of NRS Chapter 179D, thus ensuring that prints remain current and the offender or sex offender always appears in person, as required by NRS 179D.480(1).

¹ NRS Chapter 179D imposes registration requirements for persons convicted of a sexual offense or a crime against a child. See NRS 179D.0357 (defining “crime against a child”); NRS 179D.0559 (defining “offender convicted of a crime against a child” and “offender”); NRS 179D.095 (defining “sex offender”); NRS 79D.097 (defining “sexual offender”).

ANALYSIS

In 2007, the Nevada Legislature overhauled the statutes governing registration of sex offenders. Of particular importance, the amendments to NRS Chapter 179D significantly changed how and when certain identifying information for offenders and sex offenders is collected and updated. DPS and local law enforcement agencies have debated how often local law enforcement agencies must obtain a new set of fingerprints and palm prints for offenders and sex offenders. As the analysis below explains, local law enforcement agencies have discretion to determine when a new set of prints should be collected, and the exercise of that discretion should be informed by the overarching policy behind the requirement for registration under NRS Chapter 179D.

I. NRS Chapter 179D does not compel local law enforcement agencies to obtain a new set of fingerprints and palm prints each time an offender or sex offender must appear in person under NRS 179D.480.

Statutes must be given “their plain meaning unless this violates the spirit of the act.” *McKay v. Board of Sup’rs of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). “Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature’s intent.” *Id.* “[I]t is the duty of [courts], when possible, to interpret provisions within a common statutory scheme ‘harmoniously with one another in accordance with the general purpose of those statutes’ and to avoid unreasonable or absurd results, thereby giving effect to the Legislature’s intent.” *Southern Nevada Homebuilders Ass’n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (quoting *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001)).

NRS Chapter 179D governs registration of persons convicted of sex offenses or crimes against children. A person convicted of a crime against a child or a sexual offense shall “register initially with the local law enforcement agency of the appropriate jurisdiction in which the offender or sex offender was convicted. . . .” NRS 179D.445. Thereafter, the offender or sex offender has a duty to update the registration after any changes to their name, residence, place of employment, and status as a student. NRS 179D.447. Additionally, the offender or sex offender must periodically appear in person at a local law enforcement agency in a jurisdiction where they reside. NRS 179D.480.

George Togliatti, Director
Mindy McKay, Division Administrator
Nevada Department of Public Safety
Page 4
March 25, 2020

When the offender initially registers under NRS 179D.445 or appears in person as required by NRS 179D.480, they “shall provide the local law enforcement agency with” specific identifying information, not including fingerprints and palm prints, while “[t]he local law enforcement agency shall ensure that the record of registration of the offender or sex offender includes ... the fingerprints and palm prints of the offender or sex offender.” NRS 179D.443(1); *see also* NRS 179D.151(1)(a)(2) (requiring the contents of a record of registration to include “[a] complete physical description of the offender or sex offender, a current photograph of the offender or sex offender and the fingerprints and palm prints of the offender or sex offender.”). NRS 179D.480(1) establishes a schedule for the frequency that an offender or sex offender must appear in person, which is dependent on whether they are classified as a Tier I, Tier II, or Tier III offender. *See* NRS 179D.113-117 (defining tiers). And the Central Repository for Nevada Records of Criminal History (“Central Repository”) is responsible for establishing and updating a record of registration with the information obtained from the offender or sex offender and then providing any information required by federal law to the Federal Bureau of Investigation. NRS 179D.170; NRS 179D.450(1); *see also* NRS 179D.020 (defining “Central Repository”); NRS 179D.070 (defining “record of registration”); NRS 179D.151 (identifying necessary contents of a record of registration).

Under NRS 179D.480(1), when an offender or sex offender appears in person, they “shall *allow* the appropriate law enforcement agency to collect a current set of fingerprints and palm prints, a current photograph, and all other information that is relevant to updating the offender or sex offender’s record of registration....” NRS 179D.480(1) (emphasis added). DPS and local law enforcement agencies have debated whether this statutory provision compels local law enforcement agencies to collect a new set of prints each time the offender or sex offender appears in person under the schedule set forth by NRS 179D.480(1). DPS has taken the position that the term “current set” as it appears in NRS 179D.480(1) modifies “fingerprints and palm prints,” such that local law enforcement agencies are impliedly required to obtain a new set of fingerprints and palm prints every time an offender or sex offender appears in person as required by NRS 179D.480. Local law enforcement agencies, however, have taken the position that NRS 179D.480(1)(c) directs the offender or sex offender to *allow* the agency to take a new set of prints, thereby impliedly vesting the agency with discretion to request a new set of prints when the offender appears in person.

George Togliatti, Director
Mindy McKay, Division Administrator
Nevada Department of Public Safety
Page 5
March 25, 2020

When its specific provisions are read in the context of the statutory scheme as a whole, NRS Chapter 179D supports the view of the local law enforcement agencies. While NRS 179D.443(1)(a) lists specific identifying information that a sex offender is required to produce when appearing in person under NRS 179D.480, that list does not include the requirement to produce a new set of fingerprints and palm prints. Instead, NRS 179D.443(1)(c) imposes a duty on local law enforcement agencies to “ensure that the record of registration of the offender or sex offender *includes* ... the fingerprints and palm prints of the offender or sex offender....” (emphasis added). If the Legislature had wanted an offender or sex offender to produce a new set of fingerprints and palm prints each time the offender or sex offender appears under NRS 179D.480, the Legislature would have listed that production requirement along with the other production requirements in NRS 179.443(1)(a). *See In re: Estate of Prestie*, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006) (applying the rule of statutory construction which states that when one thing is mentioned, the exclusion of another is implied). Instead, it is the local law enforcement agencies’ duty to *ensure* that the record of registration includes the offender’s or sex offender’s fingerprints and palm prints. Unaccompanied by a specific mandate to obtain new prints at recurring intervals, such a duty implies a grant of discretion to the agency. In other words, at the agency’s discretion, the offender or sex offender must provide a current set of prints upon request.

A comparison of the current statutory language with the pre-2007 language governing registration also supports the local law enforcement agencies’ position. In particular, under the statutory framework as it existed prior to 2007, NRS 179D.480 compelled sex offenders to periodically mail a verification form to the Central Repository and to include “a current set of fingerprints” with the verification form. *See* 2001 Nev. Stat., ch. 415, § 13, at 2061-62. However, that specific directive was repealed in 2007 and replaced with a more general directive to “allow” local agencies to obtain a new set of prints at the time of each personal check-in. *See* 2007 Nev. Stat., ch. 485, § 40, at 2769. “It is ordinarily presumed that the legislature, by deleting an express portion of a law, intended a substantial change in the law.” *McKay*, 102 Nev. at 650. Therefore, since the Legislature deleted the mailing requirement, replacing it with a more general directive to the offender to “allow” a local agency to obtain prints at the time of an in-person visit to the agency, the Legislature demonstrated that it did not intend for local law enforcement agencies to demand a new set of fingerprints and palm prints every time the offender or sex offender appears in person under the reporting schedule established by NRS 179D.480.

In summary, the 2007 amendments to NRS Chapter 179D demonstrate that the Legislature intended to create a more effective and less cumbersome method of verifying personal identifiers through in-person inspections as opposed to paper reporting requirements. Given the potential fallibility of paper reporting requirements, the Legislature understandably imposed upon certain sex offenders the obligation to submit new sets of prints at recurring intervals. But the 2007 amendments rendered that provision obsolete. In light of the legislative history and the plain language of its companion statutes, NRS 179D.480 cannot reasonably be interpreted to compel a law enforcement agency to collect a new set of prints each time an offender or sex offender is required to appear in person before that agency.²

II. Chapter 179D leaves local law enforcement agencies with discretion in determining whether a new set of fingerprints and palm prints should be collected when an offender or sex offender appears in person under NRS 179D.480, and their exercise of that discretion should be informed by the overarching purpose of Chapter 179D.

Notwithstanding the prior conclusion, when an offender or sex offender appears in person under NRS 179D.480, the local law enforcement agency has a duty to ensure that the record of registration on file with the Central Repository includes “the fingerprints and palm prints of the offender or sex offender...” NRS 179D.443(1)(c). And when an offender or sex offender appears in person at the appropriate local law enforcement agency, they are compelled to “allow the appropriate local law enforcement agency to collect a current set of fingerprints and palm prints...” NRS 179D.480(1).

Read within the context of the entire statutory scheme, these two provisions imply that the local law enforcement agency shall request a set of fingerprints and palm prints anytime an offender appears in person *if* the record of registration does not include a set of fingerprints and palm prints. However, if the record of registration does include a set of fingerprints and palm prints, the language of NRS 179D.480(1) indicating that an offender or sex offender must “allow” collection of the fingerprints and palm prints suggests that local law enforcement agencies retain discretion to request a new set of prints anytime an offender or sex offender appears in person. In

² Should DPS desire an explicit statutory directive addressing when fingerprints and palm prints must be updated, DPS should consider referring this matter to the Advisory Committee to Study Laws Concerning Sex Offender Registration for analysis and recommendations on proposed legislative changes. *See* NRS 179D.136.

George Togliatti, Director
Mindy McKay, Division Administrator
Nevada Department of Public Safety
Page 7
March 25, 2020

exercising that discretion, local law enforcement agencies should account for at least two possibilities.

First, they should account for the possibility that an offender or sex offender altered the offender's prints. To ensure that identifying information regarding a particular offender or sex offender remains current, every time an offender or sex offender appears under NRS 179D.480, local law enforcement agencies should examine the hands of offenders or sex offenders for signs of changes to, or alterations of, the fingerprints and palm prints. Additionally, local law enforcement agencies should consider setting a regular schedule for mandatory collection of prints to avoid the possibility of any changes or alterations that might go undetected through mere visual inspection of the hands.

Second, a local law enforcement agency should be alert to the possibility that an offender or sex offender may send an imposter to a scheduled check-in. Periodic fingerprinting when a person appears under NRS 179D.480 ensures that the person appearing is indeed the offender or sex offender who is required to appear at the agency. If an agency does not collect a new set of prints every time an offender or sex offender is required to appear in person, the agency should consider utilizing randomized requests for a new set of prints to ensure that offenders or sex offenders are remaining compliant with the duty to appear under NRS 179D.480.

Local law enforcement agencies have discretion to decide when to request a new set of prints. However, those agencies should look to the underlying purpose of the registration requirement to inform the exercise of that discretion, including ensuring (1) that the identifying information in the record of registration remains current, and (2) that the offender is actually fulfilling their duty to appear in person under NRS 179D.480.

CONCLUSION

Local law enforcement agencies are not compelled to collect a new set of fingerprints and palm prints each time an offender or sex offender is required to appear in person under NRS 179D.480. Local law enforcement agencies have discretion to determine when a new set of fingerprints and palm prints should be collected. In exercising that discretion, local law enforcement agencies should be vigilant in inspecting the hands of offenders and sex offenders to identify any potential changes to, or alterations of, an offender's or sex offender's fingerprints and palm prints. Additionally, local law enforcement agencies should set a schedule for regularly collecting

George Togliatti, Director
Mindy McKay, Division Administrator
Nevada Department of Public Safety
Page 8
March 25, 2020

fingerprints and palm prints. Finally, if a local law enforcement agency elects not to collect a new set of fingerprints and palm prints each time an offender or sex offender appears in person, the agency should randomly collect prints from offenders or sex offenders outside of the regular schedule to ensure that offenders and sex offenders remain compliant with NRS 179D.480.

Sincerely,

AARON D. FORD
Attorney General

By: 

Jeffrey M. Conner
Deputy Solicitor General

JMC/klr