



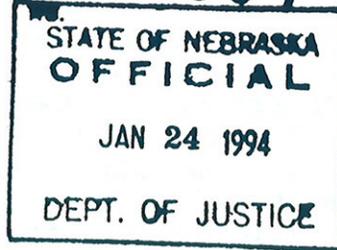
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**DON STENBERG**  
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#94007



DATE: January 11, 1994

SUBJECT: Victims' Rights

REQUESTED BY: Carol McBride Pirsch, State Senator, District 10

WRITTEN BY: Don Stenberg, Attorney General  
 Laurie Smith Camp, Assistant Attorney General

You have inquired whether the victims' rights set out in Neb. Rev. Stat. §§ 81-1848 and 81-1850 (Cum. Supp. 1992) are available to victims of crimes committed by offenders who are adjudicated under the Nebraska Juvenile Code as well as victims of crimes committed by offenders tried under the Nebraska Criminal Code. We conclude that the rights described in § 81-1848 are applicable, in part, to victims of crimes committed by offenders who are adjudicated under the Juvenile Code. The rights described in § 81-1850 are by definition applicable only to victims of crimes committed by offenders tried and convicted under the Criminal Code.

Sections 81-1848 and 81-1850 set forth certain rights of "victims" as the term is defined in Neb. Rev. Stat. § 29-119(2) (1993 Supp.). That definition reads as follows:

(2) Victim shall mean a person who, as a result of a homicide, as defined in sections 28-302 to 28-306, a first degree sexual assault, as defined in section 28-319, a first degree assault, as defined in section 28-308, a sexual assault of a child as defined in section 28-320.01, a second degree assault as defined in section 28-309, a first degree false imprisonment as defined in section 28-314, a second degree sexual assault as defined

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in section 28-320, or a robbery, as defined in section 28-324, has had a personal confrontation with the offender and shall also include a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a Class W misdemeanor as provided in section 60-6,196 or 60-197 or with violation of a city or village ordinance enacted in conformance with either of such sections. In the case of homicide, victim shall mean at least one family representative but shall not include the alleged perpetrator of the homicide. In the case of a sexual assault of a child, victim shall mean the child victim and the parents, guardians, or duty appointed legal representative of the child victim but shall not include the alleged perpetrator of the sexual assault.

So, "victims" are not only victims of crimes committed by offenders who are tried under the Nebraska Criminal Code, but also victims of crimes committed by offenders who are adjudicated under the Nebraska Juvenile Code. Some of the victims' rights described in §§ 81-8148 and 81-1850 will by the nature of their description apply only to situations where the offender has been tried and convicted under the Nebraska Criminal Code. For example, the victims' rights listed in § 81-1850 refer to a "convicted person" and place certain responsibilities on the Nebraska Board of Parole and the Department of Correctional Services with respect to information about "convicted persons." A juvenile adjudicated under Nebraska's Juvenile Code would not be considered a "convicted person" and the provisions of § 81-1850 would be inapplicable to situations involving juveniles adjudicated as delinquent. Many of the provisions in § 81-1848(2), however, have a more general application and are not restricted by definition to situations where the offender is tried under the Nebraska Criminal Code. So, many of the victims' rights listed § 81-1848(2) would be just as applicable in proceedings involving juvenile adjudications as they would in proceedings under the Criminal Code. One exception may be the victim's right to receive notification when a defendant in a felony case is released from custody under § 81-1848(2) (j), because an offender adjudicated under the Juvenile Code is not considered to be a "defendant."

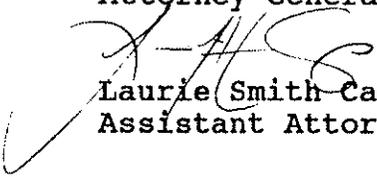
If it is your intention to revise §§ 81-1848 and 81-1850 so that the victims' rights described in those sections would apply in cases of juvenile adjudications, attention should be given to such terms as *criminal charges, defendant, conviction, and convicted person*, because such terms are used in reference to proceedings

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under the Nebraska Criminal Code, and not adjudications under Nebraska's Juvenile Code.

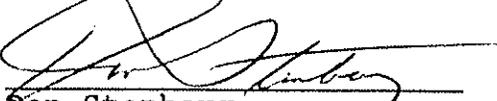
Sincerely,

DON STENBERG  
Attorney General



Laurie Smith Camp  
Assistant Attorney General

Approved By:



Don Stenberg

44-688-8.12