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NO.
STATE OF NEBRASKA
OFFICIAL
MAY 23 1994
DEPT. OF JUSTICE

DATE: May 20, 1994

SUBJECT: § 29-2290 - definition of "conviction"

REQUESTED BY: Allen L. Curtis, Executive Director Nebraska Commission on Law Enforcement and Criminal Justice

WRITTEN BY: Don Stenberg, Attorney General
William L. Howland, Assistant Attorney General

You requested our opinion on what the legal definition of the term "conviction" is under Nebraska law. More specifically, you asked does this term either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a plea of guilty.

The term "conviction" is not found in Neb. Rev. Stat. sec. 29-2290, only the term "convicted". However, the terms "convicted" and "conviction" may be treated synonymously. **Black's Law Dictionary, Fifth Ed.** (1979),states:

> "Conviction" and "convicted" mean the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, and do not include a final judgment which has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory. 18 U.S.C.A. sec. 4251.

We conclude that the term "conviction" embodies persons found guilty of an offense by a jury or court, as well as those entering a plea of guilty or no contest.

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In **State v. Mosley**, 194 Neb. 740, 741, 235 N.W.2d 402 (1975), "a determination of guilt of the crime charged and the imposition of a sentence constitute a conviction." **See also, State, ex. rel. Hunter, v. Jurgensen**, 135 Neb. 136, 280 N.W. 886 (1938) (a conviction consists of a finding of guilty and an imposition of sentence). However, recent Nebraska cases have overruled **Mosley** and **Jurgensen**. "By implication, the holdings of **Jurgensen and Mosley**, supra, that to constitute a conviction there must be not only a conviction but also a sentence, have been overruled. See, also, **State v. Schulz**, 221 Neb. 473, 378 N.W.2d 165 (1985)." **Kramer**, 231 Neb. 437, 439 436 N.W.2d 524 (1989). A "conviction occurs prior to the imposition of sentence." **Id.** "A finding of guilty constitutes a conviction." **Id.** at 438; **See also, In re Interest of Wolkow**, 206 Neb. 512, 293 N.W.2d 851 (1980), and State v. Long, 205 Neb. 252, 286 N.W.2d 772 (1980). Thus, a finding of guilt by a jury or court, as well as entry of a plea of guilty will constitute a conviction.

To prevent confusion, a distinction must be made between a "conviction" and a "judgment of conviction". "A finding of guilty is a conviction, but it is not a judgment or final order and there can be no appeal until a sentence has been imposed." **State v. Long**, 205 Neb. 252, 253, 286 N.W.2d 772 (1979). "The judgment in a criminal case is the sentence." **Id.** In other words, "the judgment is not final for appeal purposes until after sentence has been pronounced." **Kramer**, 231 Neb. at 439; see also, **Ipock v. Union Ins. Co.**, 242 Neb. 448, 455 (1993) (to allow impeachment on the basis of conviction of a crime, the judgment must be final. "One has been convicted of a crime only after a finding of guilt, an imposition of a sentence and the expiration of the time for appeal") and **Wolkow**, 206 Neb. at 515 ("to create finality in a criminal case, it is necessary that there be a judgment of conviction followed by a sentence).

By definitional inclusion, the term "conviction", embodies persons found guilty of an offense. For purposes of appeal, the judgment of conviction becomes final after a sentence is imposed.

Respectfully submitted,

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6-294-11

Approved By:

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