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#96002

NO.
STATE OF NEBRASKA
OFFICIAL
JAN 10 1996
DEPT. OF JUSTICE

DATED: January 9, 1996

SUBJECT: Impact of Proposed Legislative Change on Prosecutions Under Neb. Rev. Stat. § 28-311.02 (Cum. Supp. 1994)

REQUESTED BY: Senator Joyce Hillman, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Barry Waid, Assistant Attorney General

You have asked whether deleting the words "any victim who has been willfully and maliciously harassed" as well as all references to stalking from Neb. Rev. Stat. § 42-924 (Reissue 1993) will adversely affect prosecutions under Neb. Rev. Stat. §§ 28-311.02 - 28-311.05 (Cum. Supp. 1993).

The answer is no. The proposed legislative change will not affect prosecutions under the "stalking" statute. In 1992, the Legislature passed a provision making stalking a crime. Neb. Rev. Stat. §§ 28-311.02 - 28-311.05 (Cum. Supp. 1992). The statute required as one if its elements of proof that the acts were done in violation of one of the court orders enumerated in Neb. Rev. Stat. § 28-311.03. Protection orders were one of the court orders which, if violated by the actor, could form the basis for a stalking prosecution. The requirement that a court order (such as a protection order) be in effect prohibiting the behavior has been removed from the stalking law currently in force. Neb. Rev. Stat. § 28-311.03 (Cum. Supp. 1993). As a result, whether a citizen is

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eligible to obtain a domestic protection order will not affect the ability of the state to prosecute individuals who might victimize other citizens by stalking them.

Sincerely yours,

DON STENBERG
Attorney General

Barry Waid
Assistant Attorney General

Approved by:

Don Stenberg
Attorney General

40-936-13