DATE:  January 9, 1996

SUBJECT:  Impact of Proposed Legislative Change on
Prosecutions Under Neb. Rev. Stat. § 28-311.02

REQUESTED BY:  Senator Joyce Hillman, Nebraska State Legislature

WRITTEN BY:  Don Stenberg, Attorney General
Barry Wa id, 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 -

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.
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
§ 28-311.03 (Cum. Supp. 1993). As a result, whether a citizen is
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

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Approved by:

Don Stenberg
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40-936-13