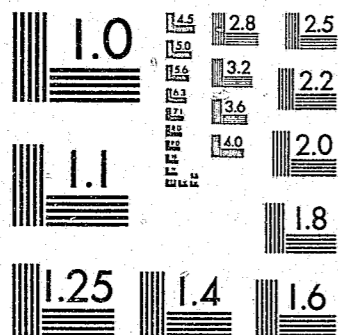


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NEBRASKA CRIME COMMISSION

U.S. Department of Justice
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★ A Study Of Assaults On Law Enforcement Officers ★

NCJRS

MAR 22 1985

ACQUISITIONS

97151

ICERS—VICTIMS OF CRIME

APRIL 1981

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(NEBRASKA CRIME COMMISSION)

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CONDUCTED AND PREPARED BY

Harris R. Owens	Executive Director
Merritt C. Green	Chief, Law Enforcement Division
Marilyn K. Kumm	Statistical Analyst
Kenneth W. Jenkins	Director, Planning Division
Mark H. Murphy	Director, Statistical Analysis Center
John C. Evans	Legal Counsel

87151
INTRODUCTION

The risk of physical confrontation has always been a hazard of the work performed by law enforcement officers. The nature of an officer's duties and responsibilities expose him or her to violence by persons resisting arrest or numerous other reasons. Since officers are bound by duty to become involved in potentially harmful situations, legislators have traditionally extended special protection through enhanced penalties for assaulting officers while they are performing their duties. When a new state criminal code was enacted in 1978, the separate statutory offense of assaulting a law enforcement officer was deleted.

THE PROBLEM OF INCREASING ASSAULTS

Through operation of the Uniform Crime Reporting (UCR) Program, the Crime Commission became aware of a disturbing increase in the number of assaults on officers during the last three years. Preliminary UCR statistics showed an increase of 23% in assaults from 1979 to 1980 and 77% from 1978 to 1980. For the first three quarters of 1980, the Lincoln Police Department reported a 79% increase in assaults and a 71% increase was reported by the Omaha Police Division.

In October of 1980 the Commission initiated a study to gather more information about the assaults. The study gathered information on 586 assaults on officers and provided the following information:

- Approximately one-third of the assaults were serious enough to warrant medical services. Agencies reported that 29% of the officers assaulted received medical attention.
- Assaults are costly to local government. Law enforcement agencies responding to the survey lost 5,946 man-hours at a cost of \$46,434, due to assaults during the three year period.
- Assaults on officers are generally processed as misdemeanor offenses. Agencies indicated that they requested misdemeanor charges on 64% of the assaults. Of the assaults resulting in requests for felony charges, approximately half were filed as felonies.

SPECIFIC STUDY RESULTS

The study of assaults on officers covered three years, 1977-1979. Departments which reported an assault on an officer through the Uniform Crime Reporting Program were asked to participate in the study. The Commission requested data on 813 assaults and received data on 586, which was a response rate of 72%.

The study was divided into three components: felony complaints requested by the law enforcement agency, misdemeanor complaints requested, and no complaint requested. Each of these components was followed through the process of prosecution to the final disposition.

FELONY COMPLAINTS REQUESTED

159 felony complaints were requested to be filed by the law enforcement agencies. Of the complaints filed, 79 were filed as felonies and 56 were filed as misdemeanors. 91% of the felonies filed were filed with the charge recommended by the law enforcement agency. In the 79 felony cases, the offender was found guilty in 55 of the cases (70%). Twenty cases were dismissed and one offender was found not guilty. Three juveniles were referred to juvenile court. 17 offenders received a fine, 35 received a jail sentence and 20 received probation. The average fine was \$198, ranging from \$32 to \$500. The average jail sentence was 214 days, ranging from one day to 16 years. The average probation period was 516 days, ranging from 120 days to 730 days.

Of the felonies requested and filed as misdemeanors, 41 offenders were found guilty (73%). Seven cases were dismissed and two juveniles were referred to juvenile court. 18 offenders received a fine, 19 received a jail sentence and 5 received probation. The average fine was \$122, ranging from \$10 to \$300. The average jail sentence was 23 days, ranging from 3 to 60 days. The average probation period was 401 days, ranging from 180 to 730 days.

MISDEMEANOR COMPLAINTS REQUESTED

373 misdemeanor complaints were requested to be filed by law enforcement agencies. Of the 85% which were filed, 99% were filed as misdemeanors and one percent as felonies. Of the 313 misdemeanors filed, 76% were filed with the charge recommended by the law enforcement agency. In those cases filed with a different charge, the offense dealing with assaulting the officer or resisting arrest was dropped in 42% of those cases once it went to court.

252 offenders were found guilty of a misdemeanor charge of assaulting or resisting arrest. 25 cases were dismissed and in six cases the offender was found not guilty. Three juveniles were referred to juvenile court.

154 offenders received a fine, 89 received a jail sentence and 68 received probation. The average fine was \$68, ranging from \$8 to \$250. The average jail sentence was 28 days, ranging from 1 day to 270 days. The average probation period was 354 days, ranging from 90 to 540 days. The three misdemeanors filed as felonies resulted in the offenders being found guilty.

NO COMPLAINT REQUESTED

Law enforcement agencies did not request charges to be filed on 54 of the assaults reported.

LOSS OF DUTY HOURS DUE TO OFFICERS ASSAULTED

Through the Uniform Crime Reporting (UCR) Program, data was kept on the number of man-hours lost due to assaults on officers. In the study the departments were asked to provide the salary of the officer assaulted; however, not all of the departments were able to provide the salary information. A 40-hour work week was used to compute an hourly wage if the hourly wage was not provided by the law enforcement agency.

In 1977, according to UCR data, 14 agencies reported 3,002 hours lost. Through the study, the hours lost were calculated for 8 agencies. For those agencies, there were 2,854 hours lost. In monetary terms, this amounted to an approximate cost of \$20,200.

Six agencies reported 1,078 hours lost in 1978. Through the study, the hours lost were calculated for 4 other agencies. Those agencies reported 1,057 hours lost, which, in terms of money, amounted to a cost of \$8,861.

In 1979, according to the UCR, 15 agencies reported 2,110 hours lost. Through the study, a loss of 2,035 hours was calculated for 10 agencies. In terms of money this amounted to cost of \$17,373.

From 1977 through 1979, there were a total of 5,946 hours lost at a cost of \$46,434 for law enforcement agencies.

SUMMARY

Assaulting an officer or resisting arrest, once considered a serious crime, is now most often considered a lesser offense. 64% of the assaults in the study were requested by the law enforcement agency to be filed as misdemeanors. When law enforcement agencies requested that a felony complaint be filed, felony charges were filed in 59% of the cases. When a misdemeanor was requested, it was filed as a misdemeanor 76% of the time.

Together there were 532 requests for felony and misdemeanor complaints for assaulting an officer or resisting arrest. 416 (78%) of the offenders ended up in court for those offenses and 84% were found guilty.

Dispositions of complaints filed are shown below:

- In those cases in which a felony complaint was requested by the law enforcement agency and filed as a felony by the prosecutor, the average fine was \$198, the average jail sentence was 214 days, and the average probation period was 516 days.
- When a misdemeanor complaint was requested and the complaint was filed as a misdemeanor, the average fine was \$68, the average jail sentence was 28 days, and the average probation period was 354 days.
- Assaults for which a complaint was requested but resulted in a misdemeanor filing, the average fine was \$122, the average jail sentence was 23 days, and the average probation period was 401 days.

CONCLUSIONS

It is clear that the rate of assaults on law enforcement officers has increased while the rate of arrests in Nebraska has decreased.

The impact of the trend throughout the state is of concern in the following areas:

- The increased risk of assault represents a deterioration of working conditions of law enforcement officers. The change may be reflected by attrition rates, reluctance of officers to act when necessary, or overreaction to situations that may require some level of force.
- In a period of time when local units of government are struggling with fiscal limitations, the economic impact of time loss and medical compensation due to assaults will be an additional burden if the trend continues.

A particular concern arising from the study is that an assault on an officer is becoming a "casual offense" in Nebraska. The change in the state's criminal code in 1978 essentially ended the intended protection extended to officers by law in the past (Appendix I). It is possible that the deletion of a specific offense of assaulting an officer has taken away a long-standing deterrent.

RECOMMENDATION

Based upon results of the study, the Commission recommends restoration of a statute that treats assault upon a law enforcement officer as a separate and distinct offense.

Although the nature of law enforcement duties will always expose officers to violent situations, the Commission feels that with public knowledge that an assault on a law enforcement officer is a separate, punishable offense taken seriously by the citizens of the state the incidence can be minimized.

A proposed statute which would establish the offense and specify punishments is offered below:

ASSAULT ON AN OFFICER: A PERSON COMMITS ASSAULT ON AN OFFICER IF HE FORCIBLY ASSAULTS ANY LAW ENFORCEMENT OFFICER WHILE ENGAGED IN OR ON ACCOUNT OF THE PERFORMANCE OF HIS OFFICIAL DUTIES.

GRADING OF ASSAULT ON AN OFFICER OFFENSES: (1) ASSAULT ON AN OFFICER CONSTITUTES A CLASS II FELONY IF THE PERSON COMMITS ASSAULT IN THE FIRST DEGREE; (2) ASSAULT ON AN OFFICER CONSTITUTES A CLASS III FELONY IF THE PERSON COMMITS ASSAULT IN THE SECOND DEGREE; (3) ASSAULT ON AN OFFICER CONSTITUTES A CLASS IV FELONY IF THE PERSON COMMITS ASSAULT IN THE THIRD DEGREE OR RESISTS ARREST A SECOND OR SUBSEQUENT TIME.

APPENDIX I

LAWS RELATING TO ASSAULTS

Prior to July, 1978, a person who assaulted or resisted a law enforcement officer could be charged as follows:

28-729.01 ASSAULT OF LAW ENFORCEMENT OFFICER

1. Elements:

- (a) Whoever forcibly assaults or resists any law enforcement officer
- (b) while engaged in the performance of his official duties
- (c) shall be guilty of a felony.

2. Penalty:

- (a) \$500 fine, one year NPCC
- (b) if uses dangerous weapon \$5,000 fine, one to five years NPCC.

After July, 1978, with the revision in the State's criminal code, an assault on a law enforcement officer was considered as an assault on a civilian. The laws relating to assault are as follows:

23-308. Assault in the first degree. (1) A person commits the offense of assault in the first degree if he intentionally or knowingly causes serious bodily injury to another person. (2) Assault in the first degree shall be a Class III felony.

28-309. Assault in the second degree. (1) A person commits the offense of assault in the second degree if he: (a) intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or (b) recklessly causes serious bodily injury to another person with a dangerous instrument. (2) Assault in the second degree shall be a Class IV felony.

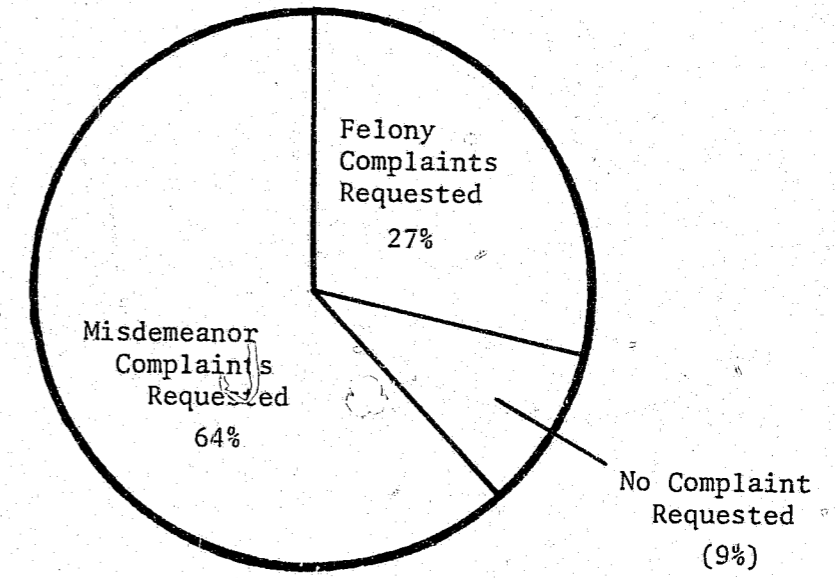
38-310. Assault in the third degree. (1) A person commits the offense of assault in the third degree if he: (a) intentionally, knowingly, or recklessly causes bodily injury to another person; or (b) threatens another in a menacing manner. (2) Assault in the third degree shall be a Class I misdemeanor.

28-904. Resisting Arrest; penalty; affirmative defense. (1) A person commits the offense of resisting arrest if, while intentionally preventing or attempting to prevent a peace officer acting under color of his official authority, from effecting an arrest of the actor or another, he:

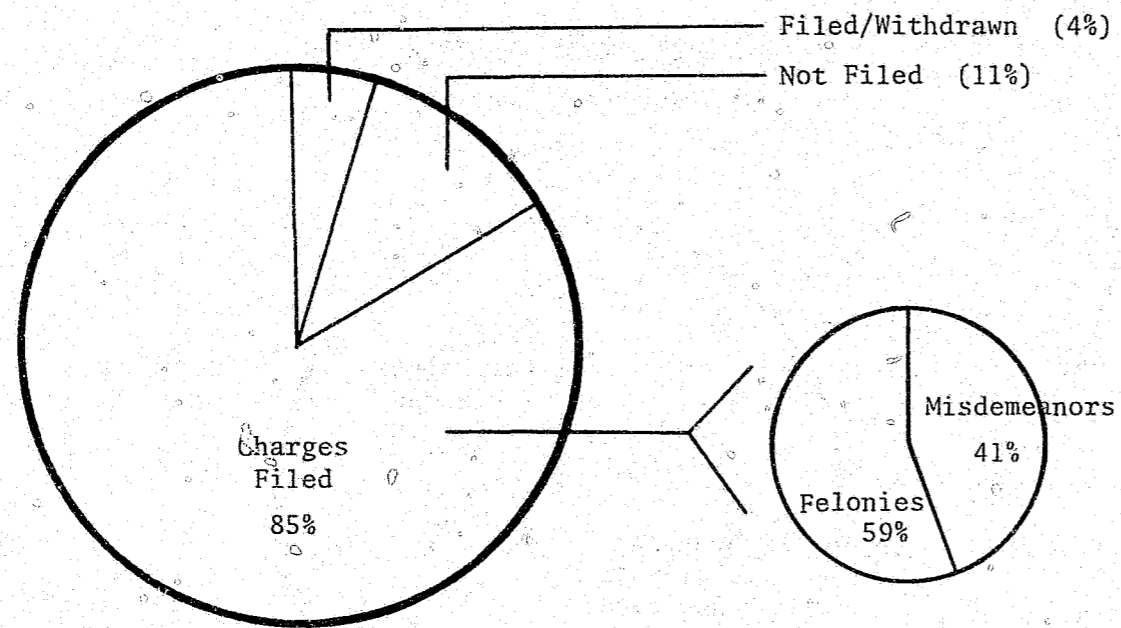
- (a) Uses or threatens to use physical force or violence against the peace officer or another; or
 - (b) Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or
 - (c) Employs means requiring substantial force to overcome resistance to effecting the arrest.
- (2) It is affirmative ... etc.
(3) Resisting arrest is a Class I misdemeanor.
(4) Resisting arrest through the use of a deadly or dangerous weapon is a Class IV felony.

APPENDIX II

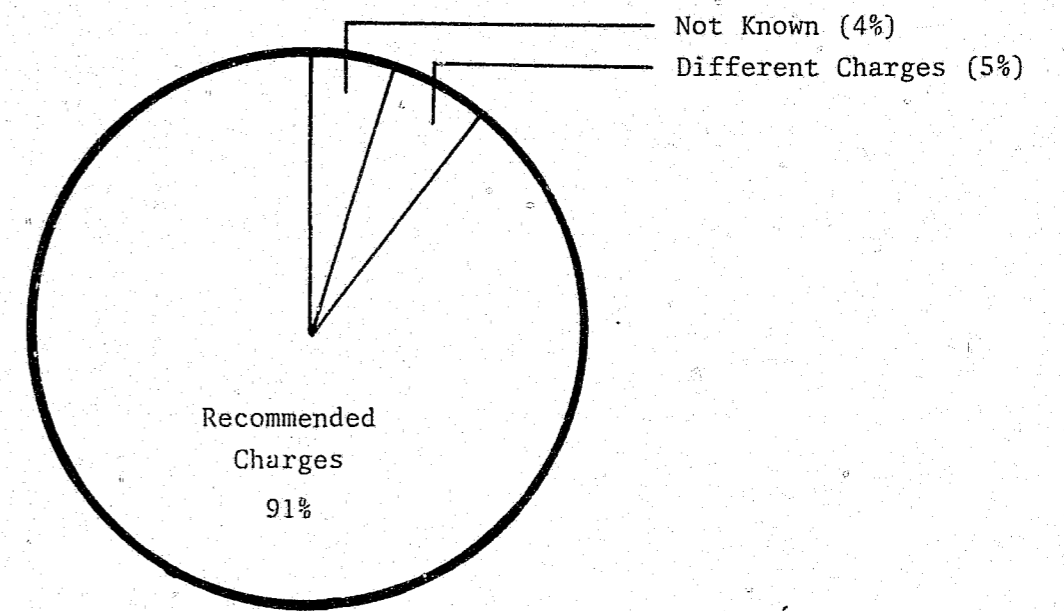
REQUESTS FOR COMPLAINTS TO BE FILED
BY LAW ENFORCEMENT AGENCY



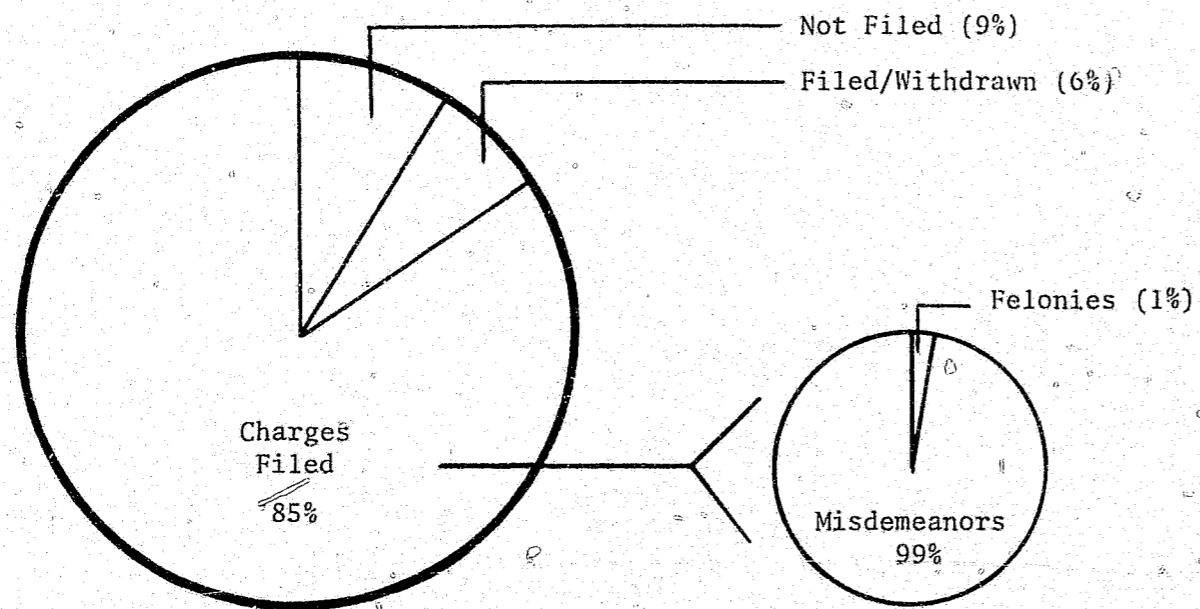
FELONY COMPLAINTS REQUESTED



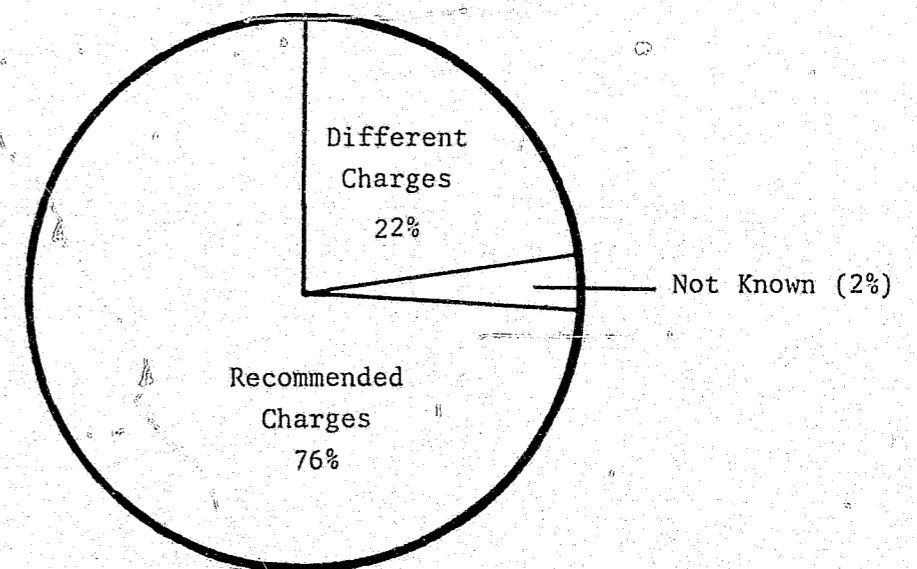
FELONIES FILED BY PROSECUTORS



MISDEMEANOR COMPLAINTS REQUESTED



MISDEMEANORS FILED BY PROSECUTORS



Nebraska Commission on Law Enforcement and Criminal Justice

APPENDIX III

1. Did your department request filing of a complaint for the assault on the law enforcement officer? YES _____ NO _____

If YES - felony complaint _____ or misdemeanor complaint _____
Recommended charge _____

2. What action did the county/city attorney take on the above recommended charge?

Check one of the following:

• Complaint Not Filed _____

• Complaint Filed _____

felony complaint _____ or misdemeanor complaint _____

Charge _____

• Complaint Filed/Withdrawn _____

3. Court Disposition

Dismissed _____

Not Guilty _____

Guilty _____

Penalty Assessed:

Fined \$ _____

Jailed _____ (length of time)

Probation _____ (length of time)

Other (specify) _____

OFFICER INFORMATION

To assess the number of man hours lost in terms of money we need to know the approximate salary of the officer at the time he was assaulted \$ _____

Did the officer receive medical attention? YES _____ NO _____

COMMENTS: (Recommendations for reducing assaults)

AGENCY _____ DATE _____

PREPARED BY _____ TITLE _____

END