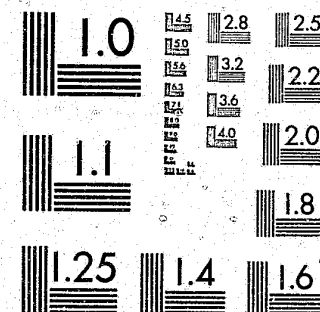


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FOLLOW-UP STUDY OF  
ASSAULTS ON LAW ENFORCEMENT OFFICERS

DECEMBER 1984

NCJRS

MAR 22 1985

ACQUISITIONS

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NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

COMMISSION MEMBERS

<u>NAME</u>	<u>REPRESENTATION</u>	<u>ADDRESS</u>
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Paul Douglas	Attorney General	Lincoln
Mrs. Irene Abernethy	County Commissioner	Grand Island
Joseph Friend	Public Safety Director	Omaha
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Patrick Kelly	Sarpy County Attorney	Papillion
Jennifer Keys	Public at Large	Omaha
Col. Elmer Kohmetscher	Superintendent State Patrol	Lincoln
Norman Krivosha	Chief Justice, Supreme Court	Lincoln
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Shirley Kuhle	Administrator, Victim/Witness Unit	Lincoln
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Joseph Steele	State Court Administrator	Lincoln
Clyde Storie	Sheriff	Pender

## INTRODUCTION

The risk of physical confrontation has always been a hazard of the work performed by law enforcement officers. Because of the nature of an officer's duties and responsibilities, exposure to violence by persons resisting arrest or numerous other reasons is presumable. 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.

In 1981 the Nebraska State Crime Commission conducted a study on "Assaults on Law Enforcement Officers in Nebraska." This study concluded that assaults on an officer were becoming "a casual offense" in Nebraska and because of this conclusion Nebraska Statute 28-929 was passed to protect officers from assaults.

## ASSAULTS INCREASE AGAIN

Through operation of the Uniform Crime Reporting (UCR) program, the Crime Commission became aware of an increase again in the number of assaults on officers during the year 1983. Preliminary UCR statistics showed an increase of 4% from 1982 to 1983. As of June 1983 there were 3,878 sworn law enforcement officers in Nebraska. During 1982-1983, data collected shows that 747, or 19%, of these officers were assaulted. Several agencies reported increases in assaults, including the Omaha Police Division which reported an increase of 24%.

In September of 1984 the Commission initiated another study to gather more information about the assaults. The study gathered information on these assaults on officers and provided the following information:

- o Assaults on officers were generally processed as misdemeanors. Agencies indicated that they requested misdemeanor charges on 75% of the assaults. In the felony assaults requested, 8% were requested as Felony II, 14% as Felony III, 64% as Felony IV (felony statute), and 13% as Felony IV (misdemeanor statute).\*
- o Known plea-bargaining was used only in 11% of the assaults filed. Plea-bargaining was used more extensively in felony charges than in misdemeanor charges.
- o Fine, jail, and probation were the three disposition penalties evaluated. An average, range, and total number of cases of each disposition was computed. Probation was not used as often as the fine or jail penalties. In most instances harsher dispositions were given out for each higher degree of assault.

\*Percent total differs from 100 due to rounding error.

## SPECIFIC STUDY RESULTS

The assaults on officers' study was for the years 1982-1983. Departments which reported an assault on an officer through the UCR Program were asked to participate in the study.

The study was divided into three main elements: misdemeanor complaint requested, felony complaint requested, and no complaint requested. Each element was followed through the prosecution process to the final disposition stage. Averages and ranges of each penalty assessed are given, with some of the offenders perhaps having a combination sentence of two or even all three penalties.

## FELONY COMPLAINTS REQUESTED

The felony complaints were subdivided into four different categories according to the degree of assault: 1) Felony II, 2) Felony III, 3) Felony IV (felony statute-FS), and 4) Felony IV (misdemeanor statute-MS).

### Felony II Complaints

Felony II is the highest penalty for assaulting an officer. There were only seven total felony II complaints requested. Five (71%) of these were filed, and two (29%) not filed. Of those filed four were found guilty, but none were fined or put on probation. All four (80%) were jailed, with an average jail sentence of 116 days and a range from 14 days to 180 days. The remaining case was plea-bargained.

### Felony III Complaints

The next lower degree is the Felony III. Of the 13 requested, twelve (92%) were filed and only one (8%) not filed. Eleven (92%) were found guilty, and the other one (8%) dismissed. The average fine was \$106 with a range from \$40 to \$228. The average length of jail stay was 232 days and a range from 30 days to 1095 days. Only 18% were being put on probation with an average length of 273 days and a range from 180 days to 365 days.

### Felony IV Complaints (Felony Statute-FS)

The majority of felony assaults were requested as a Felony IV assault according to the felony statute conditions. There are two separate Felony IV charges, the Felony IV (FS) resulting from felony conditions and Felony IV (MS) being a second or subsequent offense of the misdemeanor charge of resisting arrest. This section covers Felony IV (FS). 83% of Felony IV (FS) assaults were filed, 14% not filed, and 3% were filed then



withdrawn. Again only one (2%) case was dismissed, and the rest (98%) were found guilty. The average fine was \$167 with a range from \$10 to \$300. Average jail time was 187 days with a range from 8 days to 730 days. When probation was used, the average length was 993 days with a range from 180 days to 1825 days.

#### Felony IV Complaints (Misdemeanor Statute-MS)

Only 12 of these complaints were requested, with eight (67%) being filed and four (33%) not filed. A 75% conviction rate was found, and the remaining 25% were dismissed. The average fine was \$106 with a range of \$75 to \$150. The average jail term was 30 days. Probation had an average period of 453 days with a range from 365 days to 540 days.

#### MISDEMEANOR COMPLAINTS REQUESTED

As mentioned previously, misdemeanor requests dominated the majority of assault complaints. 75% were requested as misdemeanor charges. 293 (89%) of these were filed, 33 (10%) not filed, and 4 (1%) were filed then withdrawn. A conviction rate of 88% was found, with 11% dismissed and only 1% not guilty. The average fine was \$62 with a range from \$5 to \$200. The average jail term was 25 days with a range from 1 day to 120 days. An average probation period was 351 days and a range from 90 days to 1095 days.

#### NO COMPLAINT REQUESTED

Law enforcement agencies did not request charges to be filed on only 21 (5%) of the assaults reported.

#### PLEA-BARGAIN

Known plea-bargaining was used in 48 (11%) of the total misdemeanor and felony charges filed. It was used more extensively in the felony charges with 30% of the cases being given a lesser charge. Plea-bargaining was used in only 21 (6%) of the 330 misdemeanors, resulting in a lesser charge being filed.

#### SUMMARY

Assaulting an officer and/or resisting arrest, once considered a serious crime, is still most often considered a lesser offense. Of the assaults requested by law enforcement agencies 75% were filed as misdemeanors. The high percentage was due mainly to the high number of misdemeanors filed in the Omaha Police Division, who also had low penalty averages for assault and/or resisting arrest convictions.

#### CONCLUSIONS

It is clear that the rate of assaults on law enforcement officers has increased while the seriousness of the crime is still considered "casual." There is an obvious trend difference between metropolitan and rural areas. In large metropolitan areas assault charges are being treated much more casually. These areas have more lenient penalty averages and lesser degrees of assault charges.

To clear up a misconception, the known plea-bargaining done on assault on officer cases is at a minimum, with only 11% getting lesser charges.

#### RECOMMENDATIONS

Based upon results of the study, the Commission recommends stronger support of already existing assault on law enforcement officers' statutes when necessary.

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 may be minimized.

\*\*\* APPENDIX A \*\*\*

NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

1984 STUDY OF ASSAULTS ON LAW ENFORCEMENT OFFICERS IN NEBRASKA

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

If YES - Misdemeanor (1st offense) \_\_\_\_\_ Other (specify) \_\_\_\_\_  
Felony II \_\_\_\_\_  
III \_\_\_\_\_  
IV \_\_\_\_\_ (Felony statute)  
IV \_\_\_\_\_ (Misdemeanor statute-2nd or subsequent offense)

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

Complaint not filed \_\_\_\_\_

Complaint filed \_\_\_\_\_

If different from above, specify. \_\_\_\_\_

Complaint filed/Withdrawn \_\_\_\_\_

3. Did the county/city attorney plea-bargain the recommended charge? YES \_\_\_\_\_ NO \_\_\_\_\_

If YES - from Felony to Misdemeanor \_\_\_\_\_  
Felony III to IV \_\_\_\_\_  
Felony II to III \_\_\_\_\_  
Other (specify) \_\_\_\_\_

Comments (plea-bargain): \_\_\_\_\_

4. Court Disposition:

Dismissed \_\_\_\_\_

Comment: \_\_\_\_\_

Not Guilty \_\_\_\_\_

Comment: \_\_\_\_\_

Guilty \_\_\_\_\_

Penalty Assessed:

Fined \$ \_\_\_\_\_

Jailed \_\_\_\_\_

Probation \_\_\_\_\_

Other (specify) \_\_\_\_\_

5. RECOMMENDATIONS (for reducing assaults):

AGENCY \_\_\_\_\_ DATE \_\_\_\_\_

PREPARED BY \_\_\_\_\_ TITLE \_\_\_\_\_

\*\*\* APPENDIX B \*\*\*

ARTICLE 9: OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section 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 or her official authority, from effecting an arrest of the actor or another, he or she:
  - (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 an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself or herself as a peace officer by showing his or her credentials to the person whose arrest is attempted.
- (3) Resisting arrest is (a) a Class I misdemeanor for the first such offense and (b) a Class IV felony for any second or subsequent such offense.
- (4) Resisting arrest through the use of a deadly or dangerous weapon is a Class IV felony.

Section 28-929. Assault on an officer in the first degree; penalty.

- (1) A person commits the offense of assault on an officer in the first degree if he or she intentionally or knowingly causes serious bodily injury to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.
- (2) Assault on an officer in the first degree shall be a Class II felony.

Section 28-930. Assault on an officer in the second degree/penalty.

- (1) A person commits the offense of assault on an officer in the second degree if he or she:
  - (a) Intentionally or knowingly causes bodily injury with a dangerous instrument to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties; or
  - (b) Recklessly causes bodily injury with a dangerous instrument to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.
- (2) Assault on an officer in the second degree shall be a class III felony.

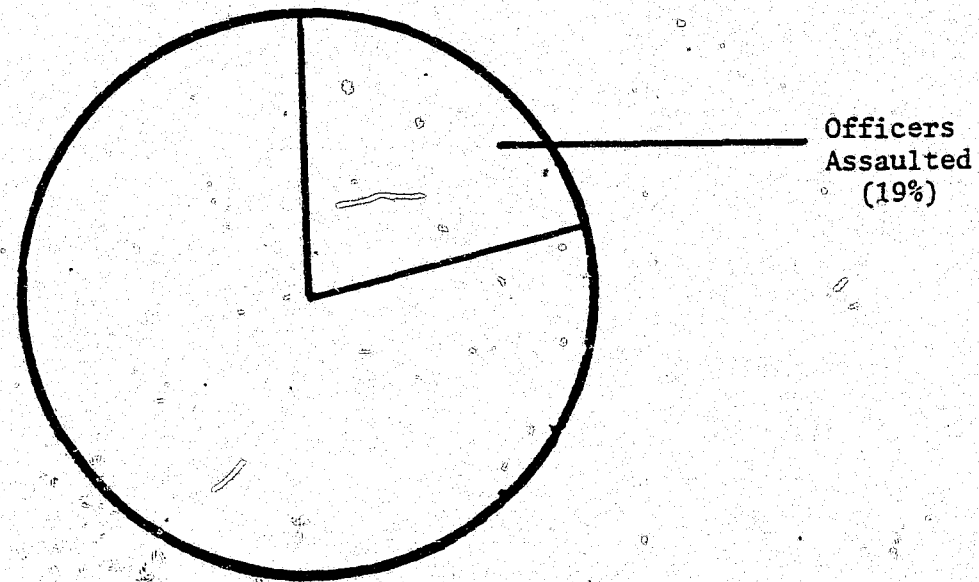
Section 28-931. Assault on an officer in the third degree/penalty.

- (1) A person commits the offense of assault on an officer in the third degree if he or she intentionally, knowingly, or recklessly causes bodily injury to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.
- (2) Assault on an officer in the third degree shall be a Class IV felony.

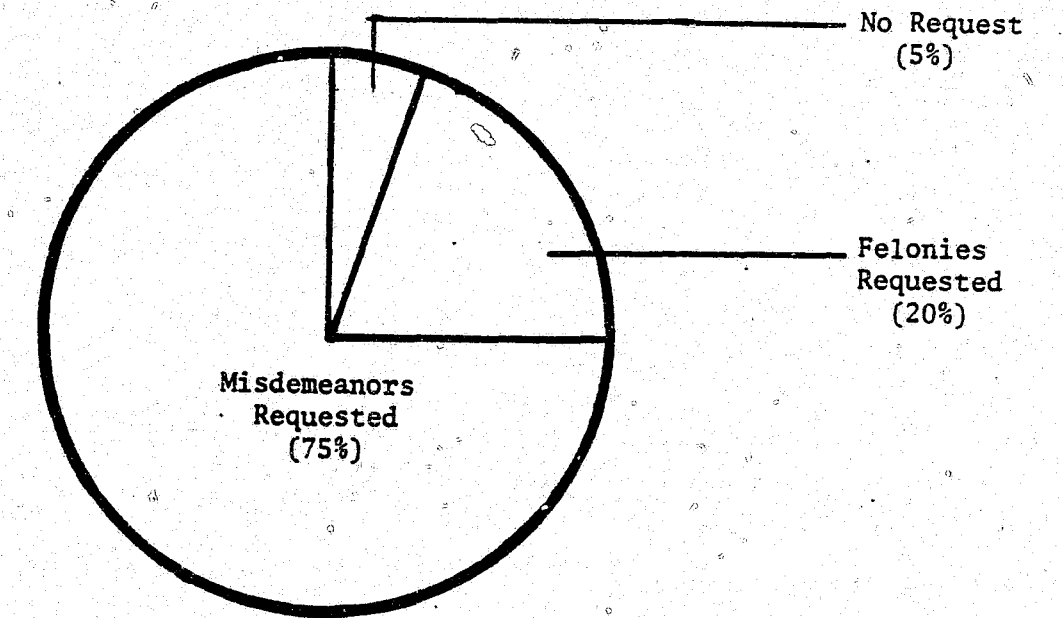
\*\*\* APPENDIX C \*\*\*



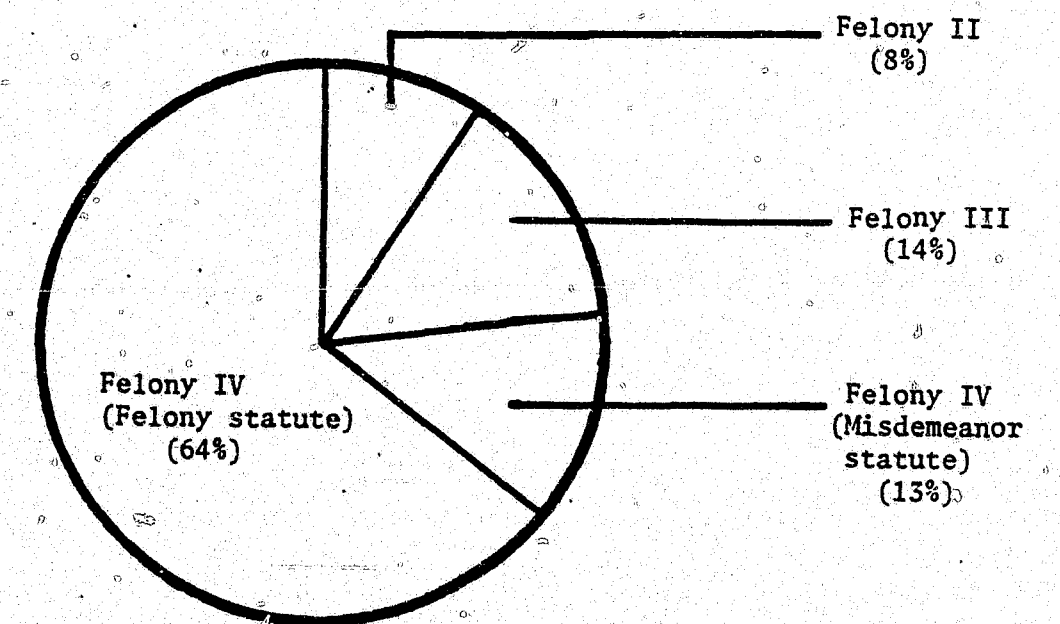
OFFICERS ASSAULTED  
1982-1983



TOTAL REQUESTS FOR COMPLAINTS TO BE FILED  
BY LAW ENFORCEMENT AGENCY  
1982-1983



FELONY REQUESTS\*



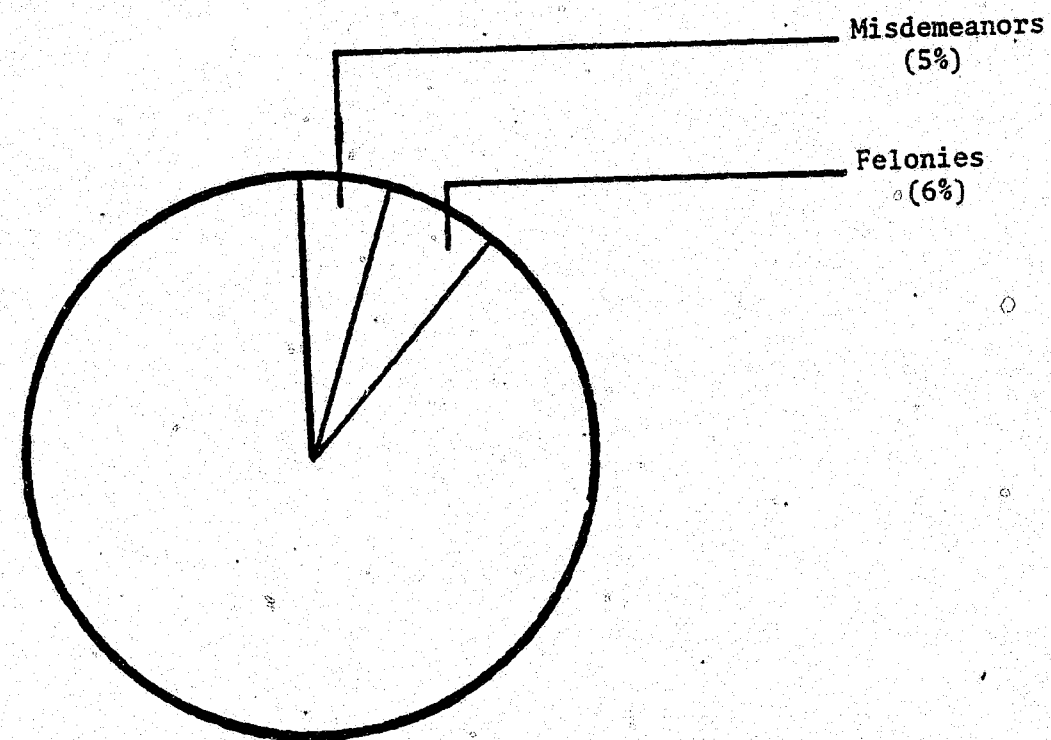
\*Percent total differs from 100 due to rounding error.



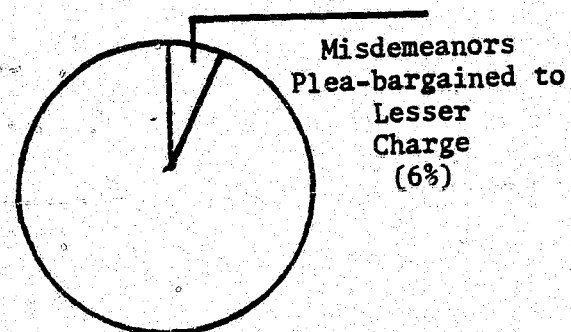
# PLEA-BARGAINING BY PROSECUTOR

1982-1983

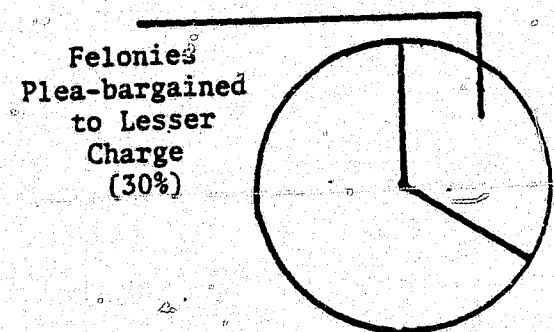
TOTAL CASES



## MISDEMEANOR



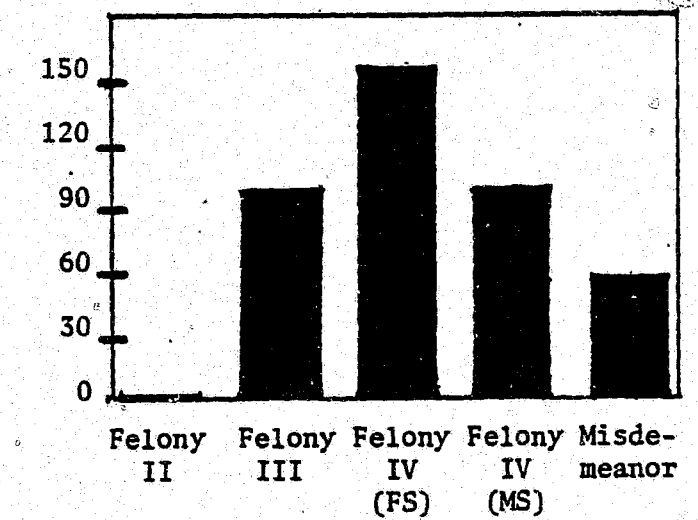
## FELONY



# DISPOSITION AVERAGES

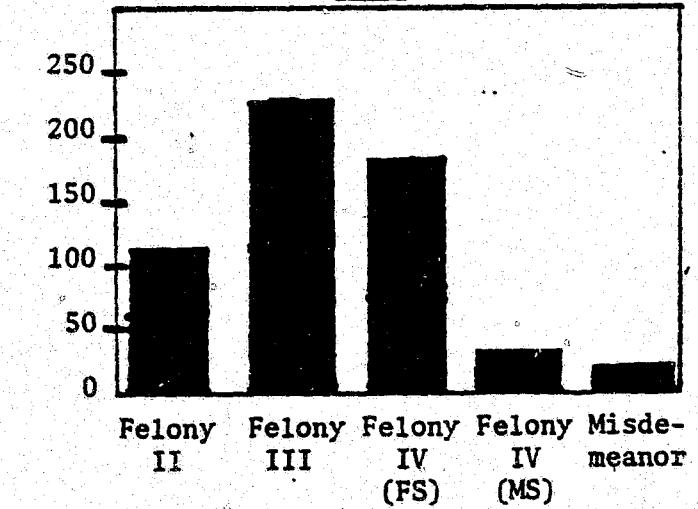
## Fine

Dollars



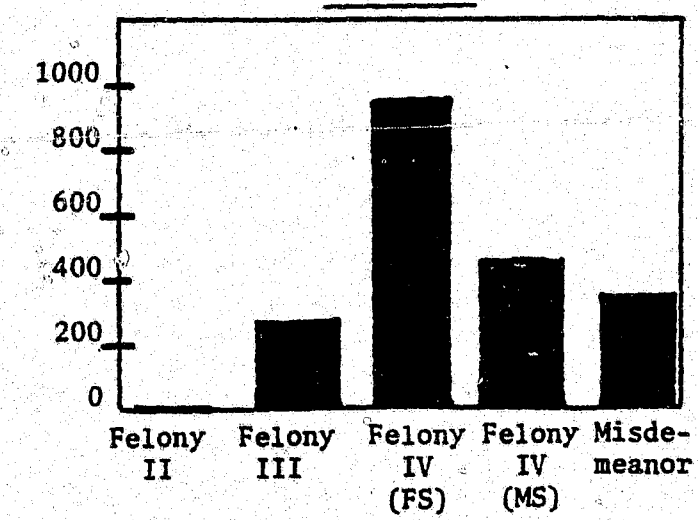
## Jail

Days



## Probation

Days



**END**