

## **SB 131: Increased Penalties for Assaults on Police Officers**

In response to SB 131 that proposes to increase the penalties for assaults on law enforcement and members of the military, the Utah Association of Criminal Defense Lawyers (“UACDL”) drafts this position paper to express its ongoing concerns about the proliferation of new laws and greater punishments to address criminal behavior. As described more fully in other UACDL legislative position papers, responding to crime with increased punishments and new variations on already existing statutes wastes precious government resources and is ineffective in reducing crime. Recent scientific research has proven that greater punishment and creating more crimes do not deter criminal behavior. To the contrary, incarcerating offenders actually exposes them to new criminal influences, educates them on how to commit additional crimes, and increases recidivism in the long run.

The crime of assault on a police officer is no exception to these ineffectual responses to crime. UACDL can provide ample support for these scientific findings in separate position papers and published reports. The focus of this paper is on the specific issues involving assaults on law enforcement officers. UACDL members’ experiences with assaults on police officers reveal unfounded allegations and abusive charging practices. Given the volatile nature of police encounters and the human tendency to punish bad behavior understandably give the incentive to file unnecessary and groundless assault charges. Indeed, the police have extremely difficult jobs and are deserving of great respect and protection. However, as history teaches, checks and balances are necessary to protect the public from human nature and abusive practices that threaten all persons’ freedom from governmental mistakes.

Although UACDL has not been able to locate hard data on assaults on police officers, UACDL members’ report that police officers unnecessarily charge this crime when arresting persons for other offenses. Rarely will police officers charge a person solely with the crime of assault on a law enforcement official. Rather, that crime almost always occurs when the police arrest a person for some other crime and that person does not fully cooperate while being detained. Thus, persons being arrested for an entirely separate matter commonly face the additional charge of assaulting a police officer when those persons resist submitting to an arrest.

This fact raises the obvious question of whether a person’s actions while being arrested truly justify charging that person with the separate crime of assault on a law enforcement officer. UACDL members report that given the often volatile nature of arrests and police officers’ tendency to employ force regardless of need, police officers frequently charge arrested persons for assault without factual support. Because the police typically use a show of force when arresting suspected offenders to deter resistance, situations quickly escalate into tense exchanges with angry words and additional threats of force. As a result, emotions run high on all sides which prompts some police officers to seek to punish

arrested persons more severely. The examples below demonstrate how police and prosecutors abusively charge this crime:

1. In most UACDL members' experiences, the facts rarely support the charge of assault on a police officer. Rather, such charges result when words are exchanged during an arrest and a police officer believes the subject has shown disrespect. To teach the arrested person a lesson, police officers unnecessarily pile on the charge of assault. Such responses are especially common because arrested persons are often intoxicated or under the influence of drugs. These people are more apt to use abusive language, to call police officers names, and to resist the application of restraint. Human nature dictates that police officers will seek to punish these persons for their unruly behavior even when an actual assault does not occur.

Given this human tendency, even minor resistance typically results in the additional charge of assaulting a police officer. But, none of these actions support the additional crime of assaulting a peace officer. Although police officers encounter tremendously difficult people when enforcing the law, vindictively filing groundless charges violates basic constitutional protections against police mistreatment. The result is lengthier jail sentences for arrested persons and greater expense to the public.

2. Similarly, UACDL members report that police officers likely charge detainees with assault because the police lack training about and understanding of mental illness. Many of the people who are charged with assaulting a police officer suffer from mental deficiencies that manifest themselves in abusive language and disrespect for authority. Untreated mental illness also accounts for much of the substance abuse that occurs in society and the resulting criminal activity that accompanies drug and alcohol abuse. When the police encounter difficult but mentally ill persons, police officers are understandably tempted to mistreat them by using force and charging them with additional offenses.
3. Another common scenario for filing groundless assault charges on police officers occurs when the police overstep their bounds and use excessive force. UACDL members have identified numerous situations in which police officers lose control of their emotions and unnecessarily attack persons without cause. Such instances are frequently reported in the media and are occasionally recorded by members of the public. When the police exceed limits on force, they may be tempted to cover up their actions by claiming that a detainee assaulted an officer which required them to apply additional force. For example, UACDL is aware of at least two elderly men in their 80's who were brutally beaten by police officers and then blamed for assaulting them.
4. More specifically, the increased use of tasers by law enforcement officers and the public outcry that occurs when abuses occur provides law enforcement additional incentive to accuse detainees of assault. In essence, by accusing the targets of tasers with assault, police officers seek to employ "the prophylactic effect of overcharging them" with other crimes. Ian A.

Mance, *Power Down: Tasers, The Fourth Amendment, and Police Accountability in the Fourth Circuit*, 91 North Car. L. Rev. 606, 647 (2013). Taser cases also raise concerns because some evidence suggest that tasers may cause involuntary reactions that may be mistakenly interpreted as resisting arrests or assaultive behavior. *Id.*

These examples present an especially difficult problem for accused persons because charges for assault on police officers commonly depend entirely on the police officer's statements. Although assaults on police officers are often groundless, they commonly hold up in court because the only evidence in support of the charges comes from police officers themselves. Judges almost always believe police officers over arrested persons when accusations of mistreatment occur. Further, prosecutors and judges are especially unlikely to dismiss assault charges out of concern for resistance to authority. To protect law enforcement officers, prosecutors and judges commonly send the message that they will not tolerate assaulting the police. However, when a person has been falsely accused of such crimes, they suffer injustices and are likely to become bitter and more determined to resist authority. Without any way to eliminate groundless accusations, judges and prosecutors unintentionally increase disrespect for authority and inflict grave injustices.

Given the frequency with which UACDL members observe the police abusively charging persons with assaults on peace officers, the Legislature should be extremely hesitant to increase penalties for this crime. The recent amendments proposed to SB 131 that target repeat offenders and enhance punishments for serious bodily injuries are welcome changes to the original draft bill. However, the amendments do not address the abuses that are detailed above. Instead, the Legislature could more effectively address both the problems posed by unfounded charges and the actual risks to police officers in a single measure. Specifically, equipping all police vehicle in the state with recording devices and requiring the use of this equipment would weed out groundless assault charges while protecting the police from violent persons. When the police record encounters with the public, evidence is readily available to verify whether a person has assaulted an officer as well as whether the officer acted properly. Recording devices would address concerns for groundless charges while simultaneously ensuring that offenders who use violence are properly charged and punished. The oversight that recording provides would also improve police officers' professionalism and ensure that they act within the limits of the law. The Utah Highway Patrol as well as many other local police agencies already use recording devices. By doing so, they acknowledge that recording police encounters is the public's and law enforcement's best interests.

One obvious objection to this proposal is the cost that law enforcement agencies would have to incur in equipping police vehicles. But, in recent years, recording equipment has decreased in price while its quality has dramatically increased. Further, the money that the state and local police agencies would save in weeding out both groundless arrests and expensive civil rights law suits would more than pay for the costs of the equipment. More importantly, the benefit to the citizens of the state that their law enforcement officials are following the law and acting legally cannot be quantified in dollars and sense. No price tag can adequately account for the freedoms from unlawful governmental intrusions that result when the police abuse their authority.