

March 17, 1980

LB 605

the offense of obstructing an officer under section 28-906 could handle the problem. Common sense and past experience dictate that an officer should not try to make an arrest in the middle of a crowd. Even those obstructing him could be arrested...even those who are obstructing him could be arrested. The obstruction statute could be used to gain access through a crowd but not to disperse the crowd. If the crowd closes around the officer he is helpless. The best solution to diffuse the dangerous situation by dispersing the crowd, then dealing with the violators but one does not attempt to disperse a crowd if he is without the means to enforce the order. This only serves to intensify the situation. If a crowd fails to disperse, person on the outside edge can be arrested more safely than those in the middle. They are also the persons who have had the best opportunity to comply with the order. Normally the arrest of a few will cause the rest to disperse. If others don't disperse at this point, other measures can then be taken, tear gas, further arrests, etc. Without a dispersal statute officers can do little more than to watch the crowd do what it wants to do, take pictures and hope to identify some of the perpetrators after the crowd disperses on its own. The purpose of a crowd dispersal statute is to prevent serious injury or violence before it occurs. It is preventive in nature. Without such a statute the officer must stand by helplessly watching violence and destruction, only hoping to later identify the perpetrator. It is true that the purpose of this statute conflicts with unfettered freedom of assembly, however, freedom of assembly is not unlimited and must in this instance be balanced against the right to be free of personal injury or death at the hands of another. Similar statutes are in effect in most states. We examined only the laws of eight surrounding states and all have this kind of legislation. It has been upheld in the courts. Even the old Nebraska statute has been before the Supreme Court. During debate one senator said the statute hadn't been used because there weren't any court cases on it. That is false. The statute has been used and it has been successful because the crowd dispersed. The amended version of 605 does not accomplish the above stated goals nor does it, as one senator argued, encourage dispersal instead of arrest. If the bill is passed in its present form it will not be used. First, it assumes that an officer can easily identify those persons who are active participants. Secondly, it assumes that the participants will disperse when ordered. If they don't we are right back where we started. They can be arrested for some other offense if it is physically possible to do so. Assuming they choose to stay in the middle of a crowd we have accomplished nothing. Further the section dealing

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