Report of the Attorney General's Task Force to Review Deadly Force Incidents by Police

January 28, 2019

Task Force Membership

Matt Brown, U.S. Probation Officer, retired (Chair)
Paul Gaspar, Executive Director, Maine Association of Police
Debra Baeder, Ph.D., Maine State Forensic Service
Bill Diamond, Maine State Senator
Darrell Crandall, Commander, Maine Drug Enforcement Agency
Francine Garland Stark, Maine Coalition to End Domestic Violence
Judy Harrison, Bangor Daily News
Fernand LaRochelle, Monmouth
Patrick Corey, Maine State Representative
John Alsop, Criminal Division, Maine Office of the Attorney General
Leonard MacDaid, Chief of Police, Newport

Staff: Brian MacMaster, Office of the Attorney General

Meetings

March 6, 2018
May 2, 2018
August 28, 2018
December 18, 2018

Introduction

On December 28, 2017, then Attorney General Janet T. Mills convened a task force to conduct a broader analysis of police-involved deadly force incidents that would go beyond the narrowly focused criminal investigation and legal review by the Office of the Attorney General pursuant to 5 M.R.S. §200-A and 17-A M.R.S. §107. The purpose of the criminal investigation into such incidents is to determine whether self-defense, including the defense of others, was reasonably generated by the facts so as to preclude criminal prosecution of an officer who used deadly force.

More specifically, Attorney General Mills suggested that a deeper analysis of deadly force incidents was the goal. In her invitation to task force members, she wrote, "While we may observe anecdotally that mental health issues dominate these incidents, and that domestic violence, guns, and drugs sometimes plays a part, I invite you to take part in a thorough review of these incidents, so that we may form more accurate conclusions about why the incidents are occurring and whether we can prevent unnecessary deaths and injuries in the future."

The task force reviewed ten (10) incidents involving the police use of deadly force that occurred during the years 2015-2016 using investigative reports generated by the Investigation Division of

the Office of the Attorney General, postmortem and investigative reports of the Office of Chief Medical Examiner, as well as recordings or transcripts of calls to the police.

Task force members agreed to examine several factors to assist in properly answering the questions raised by the Attorney General, and to determine if there were common elements or characteristics in these use-of-deadly-force incidents that might shed light upon the reasons officers responded to these calls that eventually led to an officer-involved shooting. The first set of factors related to the incident response itself, while the second set of factors attempted to look at common characteristics of the involved individuals.

Based on those factors, the following information is offered:

Incident Response

1. **Time elapsed from arrival on scene to the use of deadly force:** The average time was 5 minutes. Four (4) of the ten (10) incidents unfolded within just one minute or less.
2. **Average years of experience of involved officers:** The average years of experience of officers involved in the incidents was seven (7) years. In four (4) cases, patrol supervisors were among the officers on scene, and in three (3) of the incidents, members of tactical, special response, or negotiation teams responded.
3. **Average number of officers on scene at the time of incident:** In seven (7) of the ten (10) incidents, at least three (3) officers were present on scene. In three (3) cases, an officer was alone at the time of the use of deadly force.
4. **Use of de-escalation skills:** Based on a review of available reports, in four (4) of the ten (10) incidents, responding officers used verbal de-escalation skills. In the other six (6) incidents, it was clear that the situations developed very rapidly into deadly situations, and command and control tactics were the only appropriate option.

Characteristics of Involved Individuals

1. **Gender and average age of Involved Individuals:** Nine (9) of the ten (10) individuals involved were male. The average age was 37 years old. There was one female individual, who was 20 years old at the time of the incident.
2. **Presence of Weapons:** Weapons were present in all the incidents reviewed. In seven (7) of the incidents, the weapon was a firearm. In one of the seven, later investigation revealed that the firearm was an air rifle. In two (2) of the incidents, the involved individuals were in possession of a knife and, in a single incident, the individual was wielding a homemade weapon consisting of railroad spikes attached to one end of a rope.
3. **Criminal History:** In nine (9) of the incidents, the involved individuals had a criminal history.
4. **Domestic Violence:** After review of available documents, it was determined that six (6) of the individuals had been involved in domestic violence-related incidents.
5. **Presence of Alcohol or Drugs:** In seven (7) of the ten (10) incidents, involved individuals had either alcohol or drugs in their system at the time of the incident. *More specifically, the*

average Blood Alcohol Content (BAC) of the individuals involved was 0.241%, with three (3) individuals having a BAC of 0.30% or higher, and one having a BAC of 0.43%. In two (2) of the incidents, individuals had marijuana in their system.

6. **Mental Health:** Of the ten cases reviewed, it was determined that eight (8) of the individuals were living with mental health challenges. In seven (7) of those individuals, family and friends noted signs of depression or depression formally diagnosed. In only two (2) cases was there evidence to suggest that the individuals were receiving treatment for their mental health challenges. In those cases, the individuals were receiving intensive services and supervision of their mental health concerns, including counseling, case management, and community supervision.
7. **Homicidal Ideation**: In three (3) of the cases reviewed, the individuals made homicidal threats, and in one case there was an indication that the individual had written about committing homicide.
8. **Suicidal Ideation:** In seven (7) of the cases reviewed, the involved individuals had made statements indicating they were having suicidal ideation at the time, or prior to, the incident. In two (2) cases, individuals had a history of actual suicide attempts. In both of those cases, the individuals had multiple suicide attempts prior to the reviewed incident.
9. **Suicide-by-Cop:** In one incident, the individual repeatedly asked the officers to shoot him. While an officer used deadly force, there was no injury and 24 minutes of de-escalation resolved the situation.
10. **Recent Loss:** A review of available information indicated that in seven (7) of the ten (10) cases reviewed, the involved individuals had experienced a recent "loss." In four (4) cases, the loss was of a recent romantic relationship. In another case, the individual was facing the loss of custody of a minor child. In another case, the individual was facing a loss of freedom (probation violation), and in a final case, the individual was facing the impending loss of his property and family home.

Conclusions

1. Law enforcement officers in Maine respond daily to many calls for service that involve persons who have reached a crisis state for a variety of reasons. In most every case, there is a peaceful resolution without injury, thanks to several factors, including training at the Maine Criminal Justice Academy, as well as supplemental in-service training, such as Crisis Intervention Team training (provided through a program administered by the National Alliance on Mental Illness Maine chapter), as well as outstanding work under intense pressure. These types of calls for service are increasing across our state. Our review of the factors noted above indicates that Maine's law enforcement officers are responding multiple times a day to an increasing number of calls for service with many very complex issues (mental health, substance use, domestic violence, etc.), and doing so in an exceptional manner. Unfortunately, there are occasions when a crisis call involving a weapon and a direct threat to an officer or persons in the public requires the use of deadly force. We should continue to examine these incidents as thoroughly as possible to look for ways they can be prevented.

2. In most of the cases reviewed by the task force, officers were responding to situations that developed very rapidly. In fact, almost half resulted in the police use of deadly force in less than 60 seconds.

3. The task force identified common characteristics of involved individuals based on available information from investigative reports. The typical individual involved was a male in possession of a deadly weapon, with a criminal history, who was suffering symptoms of depression, often to the extent that they were exhibiting suicidal ideation. In addition, most individuals had alcohol or drugs in their system. Notably, several the individuals involved had extremely high BAC levels (over a 0.30%). Any crisis is a challenge for officers, but incidents when officers are dealing with a combination of the presence of weapons, a mental health crisis, suicidal and/or homicidal ideation, and high levels of intoxication where judgement is significantly impaired, makes for the most difficult and potentially life-threatening incidents.

4. Despite the substantial number of individuals living with mental health challenges, or using alcohol or drugs, it was notable that very few had, or were receiving, any formal treatment to help manage those issues. Because of the narrow scope of the Attorney General's criminal investigation focusing on criminal liability, as well as the narrow scope of the Medical Examiner's investigation, focusing on determining cause and manner of death, the task force did not have enough information to determine whether the individuals, or their family or friends had attempted to seek treatment for mental health or substance use issues.

5. Just over half of the cases reviewed involved individuals who at some point had been engaged in domestic violence. We know this has also been a significant factor in homicides in our state for some time. In one troubling case, the individual involved was arrested on multiple occasions for violating terms of bail and protection orders, and he was still free. This individual committed a homicide shortly before the incident that involved police use of deadly force on the individual.

6. It was interesting to note that in most of cases, the involved individuals had experienced a significant loss in their lives prior to the incident. Most crisis situations involve the actual or perceived loss of something significant in the person's life, such as meaningful relationship with a significant other or child, or a real or potential loss of freedom, or of something else that the person values, such as employment or property. In the case of individuals having thoughts of suicide, the loss of hope is evident to family members, friends, or responding officers. As noted above, in seven (7) of the ten (10) incidents reviewed, such losses were evident, indicating this could be a risk factor to consider in crisis situations.

Recommendations: The recommendations described below are made with the primary goal of presenting potential proactive solutions that could decrease or prevent deadly force incidents in the future.

1. It is well known that access to mental health services, particularly the availability of forensic, crisis and crisis stabilization beds in Maine is a critical issue. All too often, persons exhibiting signs of a mental health crisis are in emergency rooms for extended periods, due in large part to the lack of availability of inpatient mental health services. There needs to be efforts to expand access to crisis stabilization and inpatient mental health care, as well as intensive community supervision of individuals with mental illness who have been determined to pose a risk of serious harm to themselves or others.

2. State mental health facilities, ACT teams (multidisciplinary teams that provide intensive support and supervision of individuals with serious and persistent mental illness), and other medical or mental health practitioners, law enforcement officers, and legal guardians of those affected by serious and persistent mental illness at risk of harm to self or others, should consider the more frequent use of Progressive Treatment Programs (hereafter referred to as "PTP"). A PTP is a treatment plan that includes intensive treatment and supervision of an individual living with a severe and persistent mental illness that poses a risk of harm to self or others, but that does not rise to the level of requiring an involuntary commitment. A PTP is court-ordered and typically includes treatment requirements and restrictions. Once in place, a PTP plan may be enforced if the individual is not in compliance with its conditions, and the individual may immediately be placed in a psychiatric facility.

3. Police departments should seek out opportunities to work proactively and collaboratively with families who have a member living with mental health and/or substance use issues to try to ensure that the families are aware of available resources in their community that might be able to assist them in the recovery process, and to connect them to those resources whenever possible. Some police departments in Maine now employ mental health and substance use liaisons, and others have crisis workers who co-respond on crisis calls for service and they also follow up with individuals, offering them connection to local resources. (Portland, Westbrook, South Portland, Augusta, and Waterville are all excellent examples of this model.) The task force believes strongly in this proactive approach, and it encourages the increased use of these resources by police departments wherever and whenever possible.

4. Recognizing that many police departments do not have the financial ability to hire mental health or substance use professionals as suggested above, the task force recommends that law enforcement officers receive training and education locally on the benefits of accessing mobile crisis workers when responding to calls for service where there is evidence a person is living with a mental health or substance use disorder. These workers can be an incredibly valuable asset in an active crisis, a source for connection to needed resources, and can provide follow up with an individual or family, increasing the chances that opportunities are available for access to needed services. Although in most cases, individuals may not be compelled to access mental health or substance use services, it is critical that families and individuals are aware of what opportunities for services might be available to them PRIOR to things escalating to a crisis. Local crisis agencies themselves should make every effort to proactively reach out to their local law enforcement agencies to enhance communication between crisis response and

law enforcement. They should also endeavor to meet regularly with law enforcement so that any issues with the local crisis response system are identified and remedied.

5. Crisis Intervention Team (CIT) training is a 40-hour course that provides law enforcement officers education and training about mental illness, including ways to effectively respond to crisis situations involving persons living with mental illness, substance use, or developmental challenges. The training includes clinical presentations, skill building exercises such as role play scenarios, as well as visits to mental health and substance use providers, and discussions with individuals with the experience of mental illness, substance use disorder, or developmental disabilities. The Maine Chapter of the National Alliance on Mental Illness (NAMI) provides the training in all areas of the state. Significantly, CIT training also provides an excellent opportunity for officers to meet and interact with their local crisis response workers, and to learn about and even visit their local mental health, substance use, and crisis response services agencies. Participation in CIT training enhances an officer's ability to engage individuals living with mental illness and substance use disorder, and to potentially connect them to needed resources before a life-threatening crisis occurs. The task force recommends that law enforcement agencies expose as many of their officers and dispatchers to CIT as possible, realizing the fiscal and practical challenges of having officers and dispatchers "off-line" for a week. Officers who have received such training should be surveyed periodically as to whether they felt the training assisted them when they responded to crisis calls.

6. The task force also recommends that law enforcement agencies take advantage of every available opportunity to provide continuing training to all their officers and dispatchers who engage the local resources working with people living with mental illness, substance use disorder, and developmental disabilities, and other vulnerable populations. Because resources change frequently, it is important that officers are aware of where they might refer or direct someone in need of mental health or substance use resources.

7. The task force recommends that dispatchers have more opportunities to receive training in mental health, substance use, developmental disabilities, other vulnerable populations, and crisis response. Dispatchers are the initial point of contact for many people in crisis, or their family or loved ones. It is critical that they receive training on how to most effectively respond to someone in crisis; how to make an effective risk assessment for suicidal individuals and those in crisis; how to collaborate with their local crisis response agency; and know what their local substance use and mental health resources are, so that these resources can be shared with those calling for assistance, and most critically, what information needs to be solicited from callers and relayed to responding officers to try to ensure the safest resolution for individuals and officers. (See suggested dispatch protocol for crisis-related calls.) Efforts should be made to enable dispatchers to attend CIT training, or at the very least, local training that engages them with their local crisis response agency, and that familiarizes them with local resources.

8. The task force recommends that the Maine Criminal Justice Academy regularly review its training relative to mental illness, substance use disorder, developmental disabilities, and other vulnerable populations, to ensure that officers are exposed to the most current best practices in handling crisis situations with these populations. It is also recommended that the MCJA continue to utilize local resources to assist in delivery of that training, and that it consider including crisis response workers as well as persons living with mental illness, substance use disorder and developmental disabilities as often as practicable.

9. The task force recommends examining enhanced penalties for individuals with domestic violence histories who violate protection orders and conditions of release, as well as those found in possession of firearms. Based on one incident reviewed by the task force, as well as the historic and profound connection between domestic violence and homicide, courts should be looking more closely at these cases, particularly whether individuals should remain in the community on bail, and if so, under what conditions. There should be strong consideration of elevating to a felony level crime when there are repeated violations of protective orders. The task force also recommends that courts make more frequent use of available surveillance techniques, such as electronic and GPS monitoring, when offenders have documented histories of domestic violence.

10. The task force recommends that the Maine Criminal Justice Academy Board of Trustees mandate the addition of a seat on the Use of Deadly Force Internal Review Panel for a licensed mental health or substance use clinician.

Final Note

Members of the task force fully recognize that none of the recommendations will prevent all situations like the ones reviewed from ever occurring. But it is imperative that our law enforcement officers and dispatchers have as much information and resources at their disposal as possible, and that persons affected by mental illness and substance use disorder or anyone in crisis have increasing access to inpatient treatment if necessary, effective crisis response services, and that they are aware of the resources available to them. Recognition of the domestic violence offender's lethality is most apparent when offenders face the losses inherent in the termination of intimate relationships should inform the justice system's interventions to reduce the likelihood of tragic outcomes. It is our hope that these recommendations will inspire local and state resources and law enforcement agencies to work proactively and collaboratively to assist those in need, so that there is a reduction in the incidents in which both the public and law enforcement officers are in potentially deadly encounters.

Suggested Elements of Dispatch Protocols for Crisis Calls for Service

Suicidal person

Does the individual have a specific plan?

What is the nature of the plan?

Is there easy access to the means (weapon, etc.) to carry out the plan?

Suicide attempt in the past?

If so, what was the means?

Is the individual alone?

Consumed alcohol or used drugs? If so, what, and how much?

Is there a counselor, case manager, psychiatrist, or other community advocate with whom we can make contact?

Contacted crisis response previously?

Experienced a recent loss, such as death, divorce, or recent ending of a relationship, loss of child custody, a job, or home?

Psychosis

Is the person seeing things that are not there or hearing voices?

What are the voices telling the person, if known?

Is the person in possession of a weapon or immediately in harm's way (blocking a road, etc.)?

Has the person been to a psychiatric hospital? Voluntarily or not?

Is the person in the Progressive Treatment Program (PTP)?

In compliance with medication regimen?

Is there a counselor, psychiatrist, ACT team, or case manager?

Engaged with crisis response services previously?

Consuming alcohol or using drugs? Details, if known.