

# MAINE STATE LEGISLATURE

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May 29, 2021

The Hon. Anne M. Carney, Senate Chair  
The Hon. Thom Harnett, House Chair  
Joint Standing Committee on Judiciary  
100 State House Station  
Augusta, ME 04333

Dear Sen. Carney, Rep. Harnett, and Members of the Committee on Judiciary:

The Deadly Force Review Panel completed its fifth examination of the use of deadly force by a law enforcement officer. Pursuant to Title 5, section 200(K)(7), “within 30 days of the conclusion of the examination of the use of deadly force by a law enforcement officer . . . the panel shall submit a report on the panel's activities, conclusions and recommendations with regard to the incident to the joint standing committee of the Legislature having jurisdiction over judiciary matters.” The report is enclosed.

The Panel examined the incident that occurred on October 16, 2018, in Bangor, the details of which are part of the Panel’s enclosed report.

For the Deadly Force Review Panel:

Vendean Vafiades, Esq., Co-Chair  
Francine Garland Stark, Co-Chair

Enclosure



## October 16, 2018, Bangor Use of Deadly Force Incident

As required by 5 MRSA § 200-K, the Maine Deadly Force Review Panel submits the following report of the October 16, 2018, use of deadly force incident involving Bangor Police Officer Dylan Hall. By statute, after the release of the report of the Attorney General, the Panel shall examine deaths or serious injuries resulting from the use of deadly force by a law enforcement officer. The purpose of such examination is to identify whether there was compliance with accepted and best practices under the particular circumstances or whether the practices require adjustment or improvement. The Panel is charged with recommending methods of improving standards, including changes to statutes, rules, training, and policies and procedures designed to ensure best practices that demonstrate increased public and officer safety.

### Factual Synopsis

Late in the morning on Tuesday, October 16, 2018, a woman called the Bangor Police Department to report that her boyfriend would not leave her apartment and was threatening to cut his throat. She identified him as Brian Barker and told the dispatcher that she had left him in her apartment and locked herself with her dog in her car in the driveway. Bangor police officers were dispatched to the residence in response to the unfolding domestic violence incident.

Two officers in separate cruisers arrived simultaneously on Grove Street and observed Mr. Barker walking on the sidewalk. Both officers saw that Mr. Barker was armed with a knife. The officers issued commands for Mr. Barker to drop the knife. Mr. Barker, however, ignored the commands and began approaching the two officers while wildly swinging his arms and yelling, "Do it!" Officer Dylan Hall arrived seconds later and saw Mr. Barker in the street with the knife advancing toward the two officers as the officers backed away while commanding Mr. Barker to drop the knife. Officer Hall likewise shouted to Mr. Barker to drop the knife and when he failed to do so and continued to threaten the two other officers, Officer Hall fired his service weapon. Mr. Barker, struck by three bullets, fell to the ground.

Less than one minute elapsed between the time the officers got out of their cruisers and Officer Hall shot Mr. Barker. During this span, Mr. Barker was ordered to drop his tactical folding knife more than 20 times. Mr. Barker survived his injuries.

### Information the Panel Reviewed

Prior to its review on April 22, 2021, the Panel received a complete copy of the investigation of deadly force conducted by the Attorney General's Office. This report included all of the original investigative materials, including original interview recordings and reports, forensic reports, photographs, emergency communication transcripts, police vehicles' dash camera recordings, and other materials. The Panel also reviewed the internal critical incident review report prepared by the Bangor Police Department dated January 18, 2021. The Panel received additional clarifying information based on questions from Panel members. Attorney General Detective James Gioia attended the April 22nd meeting and answered questions of Panel members.

### Summary of Panel Discussion

On April 22, 2021, the Panel met via Zoom and conducted a review of the referenced incident. The Panel discussed the communications between the dispatcher and responding officers, the actions of the officers on the scene, and the threat Mr. Barker presented to his domestic partner, to the surrounding neighborhood, and to the responding law enforcement officers. Of particular concern to the Panel was how quickly deadly force was used and policies and procedures applicable when responding to threats involving edged weapons. Discussion also focused on the public safety challenge presented by the intersecting crises in this incident of domestic violence, substance use, and mental health. The Bangor Police Department mentioned non-lethal weapons in its internal review, which the Panel discussed, noting that any type of weapon, including all forms of “less lethal” weapons to be used by law enforcement officers require, in addition to the equipment/devices, protocols and training for appropriate use.

### Observations

1. The Panel observed that three days prior to the incident, Mr. Barker had attempted to enter treatment for his substance use disorder, but when he arrived to be admitted to the program, the placement that had been identified for him had been given to someone else. The lack of appropriate substance use treatment being immediately available contributed significantly to this crisis.
2. The Panel observed that Dispatch heard from the caller that Mr. Barker was on drugs, was suicidal, and had indicated an intention to provoke “suicide by cop.” While the suicidality was communicated to responding officers, the “suicide by cop threat” was not given that the officers had already arrived at the scene on Grove Street before Dispatch could communicate the additional information.
3. The Panel was unable to discern a sufficiently clear assessment of the distance between Mr. Barker and the responding officers at the time of the use of deadly force. While Officer Hall used deadly force from a greater distance than that between Mr. Barker and the other two responding officers, all three officers reported having made the choice to use deadly force, which occurred less than one minute from when the first officers arrived.
4. Had there been options available to the responding officers to deploy “less lethal” weapons, the circumstances of this case did not support the likelihood of such weapons as an option, primarily because the events unfolded so quickly, and Mr. Barker’s behavior was so erratic.
5. The Panel observed that current law enforcement training regarding edged weapons (in this case a seven-inch tactical folding knife with a 3 ½ inch blade) calls for reactive action to be taken when the suspect approaches within 50 feet of the officer. All three officers were within that distance, the two initial responding officers closer than Officer Hall. In all such cases, the totality of circumstances must be considered to ensure the safety of the officers and all persons within range of the threat.
6. The Panel observed that this was a densely populated area on a pleasant fall day near midday when residents would likely be out and about.

7. It is important to note that community-based services for people living with mental and behavioral health issues and needing substance use disorder treatment are insufficient. Such services, were they in place, may have prevented or mitigated this incident.

### Recommendations

1. The Panel recommends that “less lethal” munitions or other such weapons, training, and support be available to more law enforcement officers.
2. Based on the extensive review and analysis of the shooting distances in this case and the resulting ambiguities observed, the panel recommends future investigative teams include specific measurements detailing the locations of the parties involved.

### Timeline and Details

Brian Barker’s girlfriend resided on Grove Street in Bangor, and Mr. Barker was staying with her at this residence. Mr. Barker had a history of drug abuse that spanned years, and he had tried rehabilitation unsuccessfully. Mr. Barker had previous criminal convictions for assaults, burglaries, harassment by telephone, thefts, and false public alarm or report. On Saturday October 13, 2018, three days before the deadly force event, Mr. Barker’s girlfriend took him to St. Joseph’s Hospital when they learned that a bed was available at a detox facility in Hampden. She dropped him off and later learned from Mr. Barker that the bed was no longer available, but he could go there for a suboxone dose.

During the morning of October 16, 2018, Mr. Barker wanted to use his girlfriend’s vehicle. Due to Mr. Barker’s lack of sleep for the past few days, his girlfriend suspected that he had been using methamphetamine. Mr. Barker became upset when he was denied use of her car, and an argument ensued. About 20 minutes into the argument, Mr Barker grabbed a kitchen knife and held it to his own throat and began making suicidal comments. He threw a bottle of water against a door and his girlfriend told him to leave because he was scaring her. Instead of leaving, Mr. Barker grabbed a folding pocketknife from a shelf and sat on the couch. He held the knife to his neck and began talking to himself, saying he wished he had the courage.

During the approximate hour-long argument, Mr. Barker said things like “do it, shut the fuck up, I need to do it, I just want to die,” and told his girlfriend that if she called the police, he would make them shoot him. The girlfriend explained that he had said things like this to her in the past and had attempted suicide previously. She continued to try to get him to leave, but he refused. The girlfriend was scared for herself and for Mr. Barker, so she fled the residence with her dog. She went to her vehicle and locked herself inside. She waited about five minutes and then called the Bangor Police. While she was speaking to Dispatch from within her locked car, Mr. Barker approached her and reiterated his statement about what he would do if the police came. He began to walk away as officers arrived on scene.

The first two officers to arrive on Grove Street observed Mr. Barker walking on the sidewalk carrying a backpack that, appearing agitated, he threw into the street as the officers emerged from their cruisers. Both officers saw that Mr. Barker was armed with a knife. In an agitated state, Mr. Barker challenged the officers to “go ahead and smoke me.” The officers issued

commands for Mr. Barker to drop the knife. Mr. Barker, however, ignored the commands and began approaching the two officers while wildly swinging his arms and yelling “fucking do it.”

Officer Dylan Hall arrived seconds later. He saw Mr. Barker in the street walking toward the two officers with the knife in hand. Mr. Barker continued to yell and refuse repeated commands from all three officers to drop the knife. The first two officers backed away as Mr. Barker, in a highly agitated and animated state, continued to approach them. Officer Hall shouted commands to Mr. Barker to drop the knife. As Mr. Barker continued to approach the officers while refusing to drop his knife and challenging them to “fucking do it,” Officer Hall fired his service weapon at Mr. Barker four times. Mr. Barker, struck by three bullets, fell to the ground. Despite having been shot, Mr. Barker was not immediately compliant while being taken into custody by the three officers. The officers were able to secure Mr. Barker while they performed first aid until the arrival about a minute later of paramedics, who continued to treat Mr. Barker and transport him to a hospital. Mr. Barker suffered three gunshot wounds to the pelvis, knee, and ankle.

#### Panel Members

Michael Alpert, President, Greater Bangor NAACP

Debra Baeder, Ph.D., State Chief Forensic Psychologist

David Bate, Esq.

Stephen Burlock, Esq., Assistant District Attorney, District 5

John Chapman, Esq.

Rick Desjardins, Director, Maine Criminal Justice Academy

Mark Flomenbaum, M.D., Ph.D., State Chief Medical Examiner

Fernand Larochelle, Panel Vice Chair and Secretary

Brian MacMaster, Director, Attorney General Investigations

Joel Merry, Sheriff, Sagadahoc County

Janine Roberts, Chief of Police, Retired, Westbrook Police Department

Michael Sauschuck, Commissioner, Department of Public Safety

Francine Garland Stark, Executive Director, Maine Coalition to End Domestic Violence, Panel Co-chair

Dan Tourtelotte, Maine State Law Enforcement Association

Vendean Vafiades, Esq., Panel Co-chair