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August 20, 2022

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 16th 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 February 11, 2020, in Waterville, the details of which are part of the Panel’s enclosed report.

For the Deadly Force Review Panel:

Francine Garland Stark, Chair

Enclosure

February 11, 2021 - Waterville Use of Deadly Force Incident

As required by 5 M.R.S. § 200-K, the Maine Deadly Force Review Panel submits the following report of the February 11, 2021, use of deadly force incident involving Officer Paul Heath of the Waterville Police Department. 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 the examination is to find independently whether there was compliance with accepted and best practices under the 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 prove increased public and officer safety. The Panel is not charged with undertaking a *de novo* review of the determination of the Attorney General regarding the legality of the use of deadly force by law enforcement; discussions and recommendations of the panel are independent of the Attorney General.

Factual Synopsis

Close to midnight on February 11, 2020, in Waterville, a hotel tenant and some friends in a car in the hotel parking lot were approached by a man carrying a knife and yelling. The tenant called 911. Waterville police officers promptly arrived and observed the man with the knife, later identified as Eric J. Porter, age 32, in a nearby parking lot. Still armed with the knife, Mr. Porter charged at a police cruiser. He ignored multiple commands to drop the knife and ran onto Main Street and up the Interstate 95 off-ramp into the southbound lane of the Interstate highway where he sat down on a guardrail next to the passing lane. When Mr. Porter charged at an officer with the knife raised over his shoulder, Waterville Officer Paul Heath shot him. In the minutes leading up to the shooting, officers attempted repeatedly to persuade Mr. Porter to relinquish the knife, and they attempted to stop and disarm him with pepper balls and a TASER, each time without success. Mr. Porter died at the scene from a single gunshot wound.

Information the Panel Reviewed

Before its review, the Panel received a complete copy of the investigative materials compiled by the Attorney General's Office. The materials consisted of all the original investigative data, including interview recordings and reports, forensic reports, photographs, commercial video surveillance footage, emergency communications transcripts, criminal history, medical reports, and other materials. The Panel also reviewed the report of the critical incident review conducted by the Waterville Police Department dated March 8, 2021, as well as the Attorney General's report of May 27, 2022.

Summary of Panel Discussion

On July 28, 2022, the Panel met via Zoom, reviewed the referenced incident, and asked questions of Attorney General Detective Patrick Gagnon, who collected and documented evidence at the scene of the shooting. As in prior cases, the Panel discussed less-lethal means of dealing with situations as was presented in this case, noting that the effectiveness of electronic weapons or

other less-lethal means is historically limited and not feasible in situations like this case, particularly when officers are faced with an imminent and immediate threat of deadly force. In what has become a common theme in deadly force cases, the Panel also discussed the combination of mental health episodes and substance use disorder. Finally, the Panel discussed the effect that the use of deadly force incidents has on all officers involved.

Observations

1. The officers used all the less-lethal weapons available to the Waterville Police Department before the use of deadly force, including pepper balls and a TASER. The Panel discussed the adverse effect of weather and heavy clothing on these weapons. With temperatures below 20°F, the pepper balls did not detonate as designed, and Mr. Porter's thick jacket prevented the TASER from having its intended impact.
2. The postmortem examination disclosed that Mr. Porter had a substantial level of methamphetamine in his bloodstream, as well as marijuana, which contributed to his erratic behavior and refusal to comply with commands to drop the knife.
3. Mr. Porter was hospitalized due to his mental illness several months before the use of deadly force incident. Lack of compliance with subsequent treatment, continued use of drugs, and illegal activities were contributing factors in this tragic outcome.
4. Mr. Porter was homeless and temporarily sheltered in a hotel with the support of General Assistance. The Panel observed that this incident occurred during the COVID-19 pandemic, which increased both the demand for and complexity of providing services for people without homes. It is unclear what steps were taken by the hotel or others attending to those sheltered there to enlist crisis intervention services when Mr. Porter first demonstrated concerning behaviors reported to the hotel personnel by other residents.
5. There were four officers involved in the incident who were acting as full-time provisional officers, having completed the Law Enforcement Pre-Service training (LEPS), but not the Basic Law Enforcement Training Program (BLETP) at the Maine Criminal Justice Academy, their enrollment having been delayed due to COVID-19 pandemic impacts on the Academy's ability to offer classes. Although in this case, the inexperience of these four officers appeared to have no impact on the outcome, the Panel noted that this incident demonstrated the importance of law enforcement officers in Maine, regardless of their certification level, be adequately trained to deal with a deadly force encounter. That training should include firearms training, scenario-based use of force training and resiliency training that would be essential in the aftermath of a critical incident. Despite the inexperience of these four officers, the Panel observed that both Officer Heath and the shift supervisor, Sgt. Jason Longley, handled the situation professionally and appropriately.
6. The Panel discussed the profound impact that involvement in use of deadly force incidents has on all officers involved, and while there are often mandatory interventions required of the

officer who used deadly force, counseling, while encouraged, is not mandated for the others involved.

Recommendations

1. The Panel recommends that all law enforcement agencies ensure that officers are well trained in the use and the limitations of less-lethal weaponry, including factors, such as the weather, which impact their dependability to deploy as intended.
2. The Panel recommends that the Maine Criminal Justice Academy continue its review of the content of the LEPS training and standards regarding training requirements for provisional officers.
3. Support for persons experiencing homelessness should be enhanced to ensure close collaboration with mental health crisis resources and timely response to mental health crises.

Timeline and Detail

At 11:26 p.m. on Thursday, February 11, 2021, a woman, who identified herself as a tenant of a Waterville hotel, called 911 from her car in the parking lot of the hotel and reported that she and two friends were threatened by a man, later identified as Eric J. Porter, age 32, also a hotel resident. She said that Mr. Porter charged at her car with a knife in hand and, at another point, called her a “bitch” and said that he was “unkillable.” An officer of the Waterville Police Department arrived almost immediately after the 911 call and advised other responding officers that Mr. Porter, armed with a knife, was near the woods line in a nearby parking lot. The officer also reported that Mr. Porter had approached him about ten minutes before the 911 call and, at that time, asked, “What was all the shooting about?” When the officer asked Mr. Porter what he meant by that, Mr. Porter said, “You know what I mean” and walked off. The officer said that he observed no knife or other weapon during that encounter. Four additional officers also responded to the 911 call. A sergeant, the shift supervisor, was at the police station at the time of the call and was the last to arrive. All the officers were in uniform and in marked police cruisers.

The initial officer arriving reported that Mr. Porter began to walk toward his cruiser and at one point charged at it while displaying a knife. The sergeant instructed the officer to stay in his cruiser. The officer backed his cruiser away as Mr. Porter approached. When the second officer arrived, Mr. Porter ran at his cruiser, and the officer backed away. As other officers arrived, they described Mr. Porter as running around the area as they issued multiple commands for Mr. Porter to drop his knife. Mr. Porter did not comply with the commands. He walked onto Main Street with some officers following him on foot, while others followed in their cruisers. The first officer, operating his cruiser, attempted to stay ahead of Mr. Porter to prevent him from interacting with oncoming traffic, while another officer, in another cruiser, assumed a similar role at the rear. Officer Paul Heath retrieved a pepper ball launcher from his cruiser before he and another officer followed Mr. Porter on foot. An officer radioed Dispatch to call a nearby all-night convenience store to put it on lockdown. Mr. Porter ran past the Interstate 95 on-ramp, under the double Interstate overpass, and onto the off-ramp. When Mr. Porter was under the overpass on Main Street, Officer Heath deployed pepper balls at Mr. Porter, but with no effect. As Mr. Porter

continued up the off-ramp, Officer Heath again fired the pepper ball launcher, but again with no effect. Mr. Porter, still armed with the knife, walked onto the Interstate highway, and sat down on a guardrail next to the passing lane in the southbound lane. About six minutes had elapsed from the time of the 911 call.

Officer Heath told Mr. Porter that he wanted to help him and wanted this to end well. Mr. Porter stated that he had been shot in the head and removed his hat in an apparent attempt to show Officer Heath a wound on his head. However, Officer Heath observed no injury. When Mr. Porter unexpectedly stood up from the guardrail, officers repeated commands for him to drop his knife. When he failed to do so, another officer deployed more pepper balls at Mr. Porter, again to no effect. Officers blocked the southbound lanes of the Interstate with their cruisers so no vehicles could pass their location. With the knife in his right hand, Mr. Porter started walking in the direction of a cruiser. Five officers, including Officer Heath, followed him on foot. Mr. Porter continued walking along the highway, ignoring repeated commands to stop and drop the knife. Officer Heath deployed his TASER twice at Mr. Porter's back, but to no effect.

Mr. Porter, with the knife in his right hand over his right shoulder, started running at an officer standing next to his cruiser. He ignored multiple commands to drop the knife. Officer Heath said that when Mr. Porter was 10-15 feet from the officer by the cruiser, he shot him with his service weapon. Approximately 10 minutes had elapsed from the time of the 911 call. Officers rendered first aid until emergency medical personnel arrived. Mr. Porter died at the scene. A postmortem examination determined that Mr. Porter died of a single gunshot wound. Toxicological testing showed that he had levels of methamphetamine and buprenorphine in his system, as well as a level of the active ingredient of marijuana.

Panel Members

Michael Alpert, President, Greater Bangor Area Branch NAACP
 Debra Baeder, Ph.D. Clinical Director of Office of Behavioral Health, DHHS
 David Bate, Esq.
 Stephen Burlock, Esq., Assistant District Attorney (Retired)
 John Chapman, Esq.
 Jack Clements, Chief of Police, Saco
 Rick Desjardins, Director, Maine Criminal Justice Academy
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 Fernand Larochelle, Secretary
 Brian MacMaster, Chief, Attorney General Investigations
 Joel Merry, Sheriff, Sagadahoc County
 Michael Sauschuck, Commissioner, Department of Public Safety
 Francine Garland Stark, Executive Director, Maine Coalition to End Domestic Violence, Chair
 Dan Tourtelotte, Maine State Law Enforcement Association
 Vendean Vafiades, Esq., Vice Chair

Note: The individuals who serve on the Panel are appointed to bring their professional expertise to bear on discussions of these complex cases. Thus, a member of the Panel may know or have had contact with individuals who were involved in the case under review. In such situations, the member reports such affiliations to the Panel, and that information is recorded in the meeting minutes. If the Panel member determines that he or she has a conflict of

interest, the Panel member is recused from voting on the Panel's observations and recommendations regarding that case.